


3 1761 11710009 9



CA1
SW
-84P61

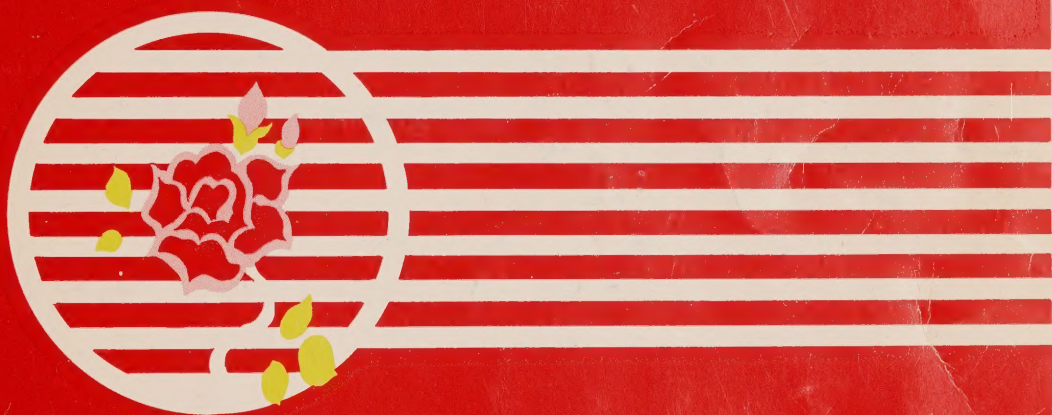
GOVT



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761117100099>

CA1
SW
- 84 P61



PROSTITUTION IN CANADA



CANADIAN ADVISORY COUNCIL
ON THE STATUS OF WOMEN

CONSEIL CONSULTATIF CANADIEN
DE LA SITUATION DE LA FEMME

PROSTITUTION IN CANADA

MARCH 1984



CANADIAN ADVISORY COUNCIL ON THE STATUS OF WOMEN

CONTENTS

Acknowledgements

Introduction	1
Chapter 1 – Canadian Prostitution Law 1839-1972	7
Chapter 2 – Prostitution and the Law Since 1972	19
Chapter 3 – Prostitution: Who, What, Where?	41
Chapter 4 – The Prostitution Debate	53
Chapter 5 – Controlling Prostitution: International Comparisons	73
Chapter 6 – Legislative and Social Reform	87
Notes	97
Selected Bibliography	111
Appendix A – Consultants	129
Appendix B – Chronology of Canadian Prostitution Law	131
Appendix C – Proposals Recommended by the Standing Committee on Justice and Legal Affairs	137
Appendix D – Proposed Act to Amend the Criminal Code	139

ACKNOWLEDGEMENTS

This report has been based mainly on research and initial drafts prepared by Fran Shaver. Revisions for the Council were made by Marylee Stephenson. Jennifer Stoddart is Director of Research for the Council.

Chapter 1 was prepared by Constance Backhouse, Faculty of Law, University of Western Ontario, and Chapter 2 by Priscilla Platt, Member of the Ontario Bar. Background documents were prepared by Debi Wells (historical data), Andrée Ruffo (juvenile prostitution) and Jillian Ridington (international comparisons).

Supporting research, administration and processing of text were provided by Carol Zavitz, Suzing Hum, Joy Brown, Elizabeth Sloss, Donna Greenslade, Monique Lesage, Pauline Vaillancourt, Shirley Kerr-Wilson, Michelle Martel and Louise Juneau. Documentation was prepared by Nicole Proulx, Josée Lescaut and Monique Viens. The manuscript was edited by Betsy Comstock. Proof-reading and layout were done by Catherine Rancy, Jim Young and Yolande Lapointe. Micheline Savoie is Director of Communications for the Council.

INTRODUCTION

Although prostitution has been found in virtually every society, the attitude toward prostitution shown by a particular society changes and changes again over the years. In Canada today, there is intense debate about prostitution and the appropriate means to deal with it.

The increased appearance of prostitutes in public places, particularly in the residential areas of some Canadian cities, has led some of the residents of those areas to press local governments and police to stop the activities of these prostitutes.

A closer look quickly reveals that there is much more than meets the eye, however. The question of who is actually engaged in the activities arises, for clearly it is not only the prostitutes themselves. There are pimps in some cases and there are always customers. A citizen who wants prostitution to disappear from sight, or to cease to exist totally, soon learns that it is no simple matter to accomplish. Citizens may expect the police to "clean out" an area, to arrest the prostitutes and put them in jail, but the police may reply that the law does not provide clear guidelines on what acts are illegal. Should they concentrate on the sellers of sexual acts, or the buyers, or both equally? What rights do the prostitutes have and what rights do their customers have?

Even if the activities of prostitution are eradicated in one place they will spring up in another, for there never seems to be a shortage of prostitutes or customers. Thus another round begins in a new area, or city, or province, or a new chain of events begins at the federal level.

For an issue as much discussed as prostitution, there is surprisingly little agreement on what it is, or even if it is a problem. Society does not avoid the issue, however. Federal, provincial and municipal laws have been made and remade for the definition and control of prostitution. Courts have tried to arrive at reasonable interpretations of these laws. Police are expected to enforce the existing laws effectively. Citizens put forward their complaints when faced with the spread of prostitution and related activities into residential and business areas. Citizens in general express varied opinions on the nature of prostitution, its legal status and the enforcement of laws against certain aspects of it.

The prostitutes themselves also have a stake in the debate. There is in Canada at least one advocacy group whose membership includes prostitutes, ex-prostitutes and others who are concerned with the rights of prostitutes and who work to make their perspectives known and understood by the public.

The Canadian Advisory Council on the Status of Women, concerned as it is with the economic and social well-being of all women, has prepared this review of the phenomenon of prostitution. While relatively few women earn their living as prostitutes, their relative poverty and limited options are shared by many other women in our society. Dependence on male-defined standards of sexual attractiveness and social desirability is shared by all women. The physical violence that is visited upon prostitutes with near impunity for the assailant is an everyday threat to a far greater number of women within their marriages or their homes.

The double standard of sexual morality which is still in evidence in our society, with some women good enough to marry and others bad enough to pay, puts all women on one or the other side of the dichotomy. The double standard of the law until very recently regarded prostitution as solely the responsibility of the woman and blamed her for an intricate set of relationships over many of which she has little or no control. Its enforcement still often touches only the women.

The studies which have examined prostitution have for the most part limited themselves to one segment of the participants – the prostitutes themselves. The implication is that the prostitutes somehow **cause** prostitution and that changing prostitutes would change prostitution. This argument is also used to support the double standard of morality and treatment under the law which women experience. Prostitutes are blamed for prostitution, just as single parent women who must work outside the home for pay are blamed for family instability. It is a familiar reversal of cause and effect, with women being given much of the blame and few of the benefits for living life as they do and as so many must.

The traditional basis for disapproval of prostitutes has been moral: it was evil to engage in sexual activity outside marriage and for pay. A strong double standard has been applied, with the woman who prostituted herself being held responsible for the whole enterprise while the customer was seen as engaging in understandable if not laudable

behaviour. Strong disapproval was directed toward the procurers who led women into prostitution; the pimps who lived off them were also socially stigmatized, although far less often punished for their actions.

Sometimes the prostitute's "guilt" was mitigated in the public eye if it was understood (and it rarely was) that unfortunate circumstances may have left her with little alternative but the life of the streets. Sometimes, too, there was tolerance for the "educational" role of the prostitute-with-heart-of-gold who initiated a young man into adult sexuality.

These simplistic approaches to prostitution and to the treatment of prostitutes are no longer acceptable. Moral indignation over the activities of only one group of actors in the world of prostitution is at the very least unfair. Where the laws are inequitable in their aims, or unevenly applied, the injustice is greatly compounded. The idea that prostitution is just a matter of buying the services of a woman to achieve sexual release is far too narrow a view of the activity and those involved in it. The nature of prostitution must be examined in a broader context.

First, prostitution is not an exchange between equals. Men, who as a group still hold most of the positions of social, economic and political power in our society, buy services from the less powerful: women (often poor, young or under-educated women), and male and female adolescents or children. The sellers have little or no defence against the risks of physical or sexual abuse or of economic exploitation. They have low social status, and if prostitution results in legal action they have the added social and economic problems that come with having a police record. The buyer, on the other hand, is not usually identifiable as a user of prostitutes so he is in little danger of social disapproval. Furthermore, he has the money: as a group, buyers do not depend on sellers for their income, while sellers generally do depend on buyers. This economic dependence reinforces the social vulnerability that prostitutes experience.

Second, it is not even clear that the exchange is sexual, or predominantly sexual. If by sexual acts we mean orgasm only, then for the male what happens with a prostitute is a sexual act. But if sexuality includes some idea of mutual sexual gratification, even at as simple a level as both partners wanting to have orgasms and having them, then prostitution definitely is not sexual. It is true that the efforts of the customer and

prostitute are directed toward the customer's ejaculation, but as will be seen in a later chapter, the time taken from the negotiation of the act to its completion is usually a matter of a few minutes. The setting is a car or alley or an anonymous room, with the prostitute consciously keeping as great a physical and psychological distance as possible from the customer. What the customer thinks or feels has not been documented, but it may well be that it is precisely the anonymity and impersonality that appeal to him, because of the social safety they ensure, and because with no obligation to know the seller's sexual or social needs he can imbue the prostitute with any qualities he wishes for those few moments. Today, the concept of sexuality is understood to encompass much more than orgasms (and one-sided ones at that). In this context, the sexual aspect of prostitution, which is characterized by brevity, impersonality and inequality, can hardly be seen as truly sexual at all.

Third, there are far more participants in prostitution than prostitutes and their customers (the latter presumably far outnumbering the former). There are those who directly profit from the activities of prostitution – pimps, owners or managers of the places where prostitution takes place, people who put customers in touch with prostitutes (bellhops in certain hotels, some taxi drivers, etc.). All break existing laws but rarely are charged accordingly. There are others involved with the world of prostitution who do not profit from it. They include regulators such as the police, lawmakers and courts, whose activities impinge upon the world of prostitution. There are also the lawyers who help prostitutes through the legal system and doctors who may be asked to treat them when they have contracted diseases, or have been physically abused in the course of their work, or if they need abortions.

The public, too, plays a part. Public attitudes contribute to the treatment society affords to the participants in prostitution. Of course the members of the public are not united in their opinions about prostitution or about what, if anything, should be done about it. This diversity of opinion is reflected in our laws and the enforcement of them, just as it is reflected in our often contradictory attitudes toward the people involved in prostitution.

Today prostitution is the focus of substantial public interest and controversy. The Canadian Advisory Council on the Status of Women has undertaken this report to contribute to an enlightened debate on prostitution in our society. The Council has a particular interest in the subject of prostitution for several reasons. As part of its

mandate, the Council provides information to the public on matters of concern to women. Because the great majority of adult prostitutes are women, and because it is prostitute women who are most often subjected to legal action rather than the other much more numerous participants in prostitution, the Council must examine both the question of women's participation in prostitution and the unequal treatment of women under the law in this regard.

For whatever reasons women become prostitutes, it is assumed that prostitution offers prostitute women a necessary or, among existing alternatives, a desirable way to earn a living at a particular point in their lives. This report will examine the nature of prostitution and the factors that concentrate the social, physical and legal risks and consequences of prostitution upon the woman, rather than upon the others who patronize her or otherwise profit from her activities.

A wider issue related to prostitution draws the attention of the Council: the commercialization of sexuality in prostitution, the turning of sexually-related behaviour into a commodity. Commercialized, depersonalized and one-sided sexuality pervades our society, appearing as it does in advertising, in fashion, and in subtle and blatant standards of beauty, attractiveness and desirability for women (standards which are not set by women and which few women can meet). Prostitution is an extreme case of this, with its explicit bargaining of price-for-service, with the emphasis upon youthfulness (youth is at a premium even though customers can be and are of any age) and upon obvious and stereotypical ideas of female attractiveness.

As will be shown in this study, the typical exchange between prostitute and customer is socially asymmetrical, brief, impersonal and cash-based. Regardless of the individual motivations of the people involved in an act of prostitution, the larger question remains: what kind of society creates a situation where these exchanges are necessary? For the prostitute they are likely to be an economic necessity, for the customer a matter of preference, perhaps **because** of their impersonality.

Our society still suffers greatly from rigid concepts of sex roles. Women's work is still massively undervalued. Women are still largely confined to the edges of economic and political power. They are the subject of the most depersonalizing and brutal treatment in pornography. In everyday life tens of thousands of women each year are assaulted within

their marriages, and there are few women who have not feared for their safety even in their own neighbourhoods. All of these conditions relate to prostitution in the sense that prostitution is a direct result, and a perpetuation, of the general demeaning of women's situation in society.

In the short run, it must be recognized that for prostitutes their work is a way of making a living. Applying legal constraints to them alone cannot be justified, nor has it ever reduced the occurrence of prostitution. In the short run, consideration must be given to reducing the unfair treatment of prostitutes and strengthening the sanctions against those who exploit them. At the same time, the perspective of the public must be considered, especially the views of members of the public whose lives are disrupted by activities associated with prostitution.

In the long run, if our society wants to eradicate prostitution it must find ways to eradicate unequal, depersonalized relationships among all people, to end sexual stereotyping and the commoditization of sexual acts. Economic, political and social inequities between men and women will have to end. The fact that such a utopian society is a long way away should not discourage serious attempts to understand prostitution and to react in an enlightened way to it. This report is part of an attempt to do that.

CHAPTER 1

CANADIAN PROSTITUTION LAW 1839 to 1972*

A study of the history of Canadian prostitution law reveals three main approaches: regulation, prohibition and rehabilitation. The proponents of regulation believed that prostitution should be recognized as a necessary social evil but regulated to contain its worst side effects, including venereal disease. Proponents of prohibition believed that prostitution should be eradicated, and they wanted criminal law to serve as a tool to root out prostitution and all the activities related to it. Those in favour of the rehabilitative approach believed that individual prostitutes should be rehabilitated to dry up the supply of labour necessary for the continuation of the trade in women. Each approach was tried in some form or other, while feminists, social reformers and government officials all vigorously debated which one was preferable. All of these legislative schemes were doomed to failure, however, because they were interlaced with class, race, and most significantly, sex discrimination.

I. Early Legislation

The earliest legislation on prostitution grew out of general vagrancy statutes which were designed to remove indigents and other undesirables from the streets.¹ Lower Canada was the first to enact a comprehensive statute dealing with prostitution in 1839. Police were authorized to apprehend "all common prostitutes or night walkers wandering in the fields, public streets or highways, not giving a satisfactory account of themselves." Persons "in the habit of frequenting houses of ill-fame" could also be arrested if they failed to give a "satisfactory account" of themselves.² In 1858, some time after Lower Canada and Upper Canada were united to form the Province of Canada, much of this legislation was extended to the united territory. The police were also authorized to arrest inmates of bawdy houses.³

Although the criminal law in Canada was usually modelled upon English precedents, Canadian law was significantly harsher in its treatment of prostitutes. In Canada if a prostitute was found in a public place, she could be punished merely for **being** a prostitute.

* Prepared by Constance Backhouse, Faculty of Law, University of Western Ontario.

In large measure it was the "status" of being a prostitute that was unlawful. In contrast, English law permitted the arrest of prostitutes only when they were found wandering in public areas "and behaving in a riotous or indecent manner," or "annoy(ing) . . . inhabitants or passengers."⁴ Specific offensive behaviour was a prerequisite for detention in England.

II. Regulation

The most notorious chapter in the history of legislation about prostitution involved the **Contagious Diseases Act**. In 1865, the united provinces of Upper and Lower Canada passed "An Act for the prevention of contagious diseases at certain Military and Naval Stations in this Province."⁵ Designed to protect military men from venereal disease, the statute authorized the detention of diseased prostitutes for up to three months at certified hospitals. Anyone could set the machinery of the act in motion by swearing before a justice of the peace that a prostitute who was suffering from venereal disease was plying her trade in one of the areas covered by the act. A police constable would locate the woman who could then choose to submit voluntarily for a medical examination or be arrested. The statute was virtually an exact duplicate of an English act by the same name passed in 1864.⁶

These acts had been lobbied for by a group of upper class male doctors, military officers and politicians in England, who accepted the principle that prostitution was an inevitable, even necessary social evil. Regulation was the best approach, they believed, to begin to minimize the negative effects of contagious disease. Middle and upper class women soon organized in England to fight for the repeal of this legislation. They argued that the acts amounted to state recognition of vice, a blatantly immoral position. They also attacked the legislation as an infringement of personal liberty, and pointed to numerous cases where innocent women had been arrested and subjected to humiliating medical examinations. They argued that the legislation was a glaring example of class discrimination, in that lower class women were molested by the law so rich gentlemen could be "guaranteed" their prostitutes were free from disease.

Most critical was the issue of sex discrimination. By 1859 most regiments of the British army had abandoned compulsory examination of soldiers for venereal disease, chiefly because it was held to be distasteful to medical officers. Women's lobby groups

denounced the acts for punishing "the sex who are the victims of vice" and leaving unpunished "the sex who are the main cause both of vice and its dreaded consequences."⁷ Debate also raged over the medical efficacy of the acts. Although both sides cited medical statistics to support their claims, it was not until the twentieth century that effective medical remedies were discovered for venereal disease. Indeed, although doctors often bragged that they could complete the internal vaginal examination of a prostitute and fill out the necessary papers within three minutes, their failure to sterilize their instruments may have spread venereal disease still further.⁸

Although the controversy over the usefulness of these acts raged in England, generating more than 500 books and pamphlets, almost 20,000 petitions bearing more than two million names, and more than 900 public meetings, it took until 1886 for the opponents of the legislation to secure its repeal.⁹ The Canadian debate was much milder. There was apparently no controversy over the initial passage of the Canadian act, and knowledge of its existence was not widespread. However two contemporary newspapers did argue over the system of regulation; the Toronto **Daily Telegraph** endorsed the act, while the Toronto **Globe** decried it as a scheme to "nurture" prostitution, which would permit the "extension of the sin and its attendant evils a thousand fold."¹⁰ The legislation was apparently never enforced in Canada, however, since no hospitals were ever certified to detain diseased prostitutes.¹¹ When first enacted, the statute had specified that it would continue in force for only five years. Without much discussion or debate, the statute expired in September 1870 and was never reintroduced.

Proponents of regulation continued to make their voices heard in later years, however. Such diverse groups as authors of the prominent medical journal, **The Canada Lancet**, and the eccentric journalist, C.S. Clark, called for reintroduction of this approach. Indeed, stating that houses of prostitution were "absolutely necessary," C.S. Clark wrote in his 1898 book, **Of Toronto the Good**: "I contend that some system of licencing or inspecting should prevail in every city in America."¹² Such notable Montrealers as Archbishop Bruchesi, Bishop Bond, Judge Desnoyers, Recorder De Montigny and E.L. Bond, President of the Citizens' League, agreed. They appeared before City Council in 1898 to ask for compulsory medical inspection of inmates of houses of ill-fame.¹³ These requests were denied; Canadian legislators did not wish to become caught in the middle of such antagonistic public debates as had occurred in England.

III. Prohibition

Victorious in their campaign to repeal the regulatory approach, reform groups now turned their attention to an attempt to prohibit prostitution. They wanted the profession that required women to sell access to their bodies to be strictly outlawed as repugnant to society. In response to this pressure, many Canadian municipalities passed by-laws suppressing prostitutes, houses of prostitution, their inmates and frequenters.¹⁴ However it was the federal government, newly created in 1867, which played the dominant legislative role.

In 1867, Parliament passed "An Act respecting Offences against the Person," which prohibited all persons from procuring the defilement of women under the age of 21, by false pretences, representations or other fraudulent means.¹⁵ That same year, "An Act respecting Vagrants" was also passed, which condemned all vagrants and disorderly persons to a maximum of two months imprisonment, fifty dollars, or both. Vagrants were defined to include:

- 1) all common prostitutes or night walkers wandering in the fields, public streets or highways, lanes or places of public meeting or gathering of people, not giving a satisfactory account of themselves;
- 2) all keepers of bawdy houses and houses of ill-fame, or houses for the resort of prostitutes, and persons in the habit of frequenting such houses, not giving a satisfactory account of themselves; and
- 3) all persons who have no peaceable profession or calling to maintain themselves by, but who do for the most part support themselves by . . . the avails of prostitution.¹⁶

As can be seen, prostitution remained a "status" offence, which did not require overt activity or behaviour before conviction. In addition, the net was widening. Now prostitutes could be arrested for attending public meetings or gatherings as well as for being on the streets. Keepers and frequenters of bawdy houses were liable to arrest, and for the first time persons living off the avails of prostitution were subject to penalty. Presumably Parliament meant to attach the activities of pimps with this last section. In

1874 and 1881, the **Vagrancy Act** was amended to increase the penalties involved to a maximum of six months at hard labour.¹⁷

These statutory measures did not satisfy the most dedicated of moral reformers, who began to demand more legislation in the 1880's and 90's to protect innocent young women from sexual exploitation. International attention was directed to the existence of "white slavery," a term coined to describe the traffic in women and the conspiracy to entrap them into serving in brothels in Europe, England and North America. Montreal was cited as one of the many ports of entry for the white slave trade. One poignant example involved a seventeen-year-old French woman who was induced to leave her job in Paris to accompany a man named Emil Chaillet to Montreal. When he promised to marry her, she travelled to Canada with him, posing as his wife. Instead Chaillet installed her in a brothel in Montreal where he forced her to live as a prostitute for seven months. Preventing her from communicating with her family back in France, he physically abused her and forced her to give him all the money she earned, which she estimated at more than \$2,000.¹⁸

Outraged citizens demanded more legislative action. In 1882, an Ontario Grand Jury recommended that imprisonment as well as a fine should be inflicted on keepers of bawdy houses, that the present laws should be strictly enforced, and that every publicity should be given to the names of those who frequented brothels. Urging the government and judiciary to take more action, the grand jurors decried the growing immorality: "From the vast increase of the social evil the foundation of the social system is being threatened and a lasting blot left upon the fair name of Canada. Let our Judges and Legislators use every means to have it removed."¹⁹ D.A. Watt, a Montrealer who headed the Society for the Protection of Women and Children, also lobbied for more legislation. After hearing his appeal, the Presbyterian Church of Canada sent a directive to Parliament: "Your petitioners believe that a large number of women are annually ruined and go down to premature graves for want of legal protection. The protection now given to women and girls should be enlarged and extended . . ."²⁰

The Canadian government responded in 1886. "An Act respecting Offences against Public Morals and Public Convenience" created several new offences. Householders were prohibited from allowing women under 16 years to resort there for the purpose of "unlawful carnal knowledge"; it was made an offence to entice a woman to a brothel for

the purpose of prostitution, or to knowingly conceal her in such a house. Men were forbidden to seduce and have illicit connection with any woman of previously chaste character who was above the age of 12 and under the age of 16. The provisions regarding bawdy houses were reenacted, with additional prohibitions against being an inmate of such a house.²¹ When the **Criminal Code** was enacted in 1892, Parliament took even more measures to attack prostitution. The federal government adopted an English statute against procuring women for unlawful carnal connection, it was made unlawful for parents or guardians to encourage the defilement of their daughters or wards, and a new offence of conspiracy to defile was created.²²

The reformers who lobbied for this legislation wanted to see prostitution eradicated. No stone was left unturned. The wide-ranging enactments covered prostitutes inside and outside brothels, brothel customers, brothel landlords, brothel madams, and all of those who contributed to the trade in female sexuality or lived off its financial reward. This was the legislative picture that would remain in place for more than a century. The majority of statutory amendments in the twentieth century did no more than add a few new peripheral offences against prostitution-related activities and fine-tune the penalties.²³

Yet this massive legal system of prohibition would fail in its mission; the seeds of its demise were embodied in its enforcement. Theoretically the legislation applied to all classes, all races and both sexes but an investigation of the records of the Toronto Gaol Register between 1840 and 1900 reveals that the majority of the people convicted under these acts were financially impoverished, generally illiterate, frequently immigrant, and overwhelmingly female.²⁴ Convictions against female prostitutes and madams, most of whom were unable to pay even minimal fines, did far less to eliminate prostitution than would have occurred if the laws had been applied to the male customers and the true financial profiteers, such as those who owned the property on which brothels operated and those who procured women for the business of prostitution. The prohibitive approach was never really given a fair chance; prostitution could never be eradicated by laws that were only directed toward the least powerful links in the chain.

IV. Judicial Interpretation

Part of the responsibility for the failure of the prohibitive approach must also be attributed to the judiciary. A small number of the persons convicted of prostitution-related offences had the financial ability and good connections to retain prominent criminal defence lawyers and have their case appealed. The judges of the higher courts, exhibiting serious concern about the negative effects on personal liberties of the legal restrictions on prostitution, tended to give a very narrow reading to the criminal law. Discharging many of the prisoners convicted at the lower adjudicative levels, they made a sharp distinction between private activities and public laws. They insisted that prostitutes and those connected with their trade should be free from arbitrary arrest and permitted to go about their private lives as unhampered as possible by the intrusion of the criminal law.

One of the best examples of this narrow judicial interpretation was the case of **Regina v. Levecque**.²⁵ Victoria Levecque had been convicted in 1870 by the police magistrate of Ottawa of being a common prostitute wandering in the public streets and unable to give a "satisfactory account of herself." Levecque retained Mr. Harrison, Q.C., who argued for her discharge before the Court of Queen's Bench of Upper Canada. Mr. Justice Adam Wilson overturned the conviction because the evidence had not shown that Levecque was in a public place, that she was a prostitute, or that she had been asked to give a satisfactory account of herself. She might have been "rightly or excusably wandering in the streets, as she had the right to do, in like manner and for like purpose as any other person," he stated. "She cannot suppose she is taken up for wandering in the streets, though she is a common prostitute, so long as she is conducting herself harmlessly and decently, and just as other people are conducting themselves."²⁶

The restrictive approach in interpretation was also evident in Quebec. **Regina v. Gareau** involved a charge in 1891 of keeping a disorderly house on Dominique Street in Montreal.²⁷ B.A.T. De Montigny, the Recorder of Montreal, had convicted Gareau, who was the kept mistress of an unnamed man who paid for her upkeep in this particular house. Chief Justice Sir A.A. Dorion, speaking for the Court of Appeal of Quebec, quashed the conviction, finding that illicit intercourse with one man alone did not constitute prostitution within the meaning of the act. Furthermore, it was held that since only one man was resorting to Gareau's room for the purpose of sexual intercourse, the room could

not be defined as a disorderly house.²⁸ It was not until 1907 that Parliament amended the legislation so that this behaviour would be specifically covered by the criminal law.²⁹

Regina v. Gibson illustrated the level of technical correctness which the judges usually required in prostitution cases.³⁰ Maud Gibson had been convicted in 1898 by the police magistrate of Hamilton of procuring a female for prostitution contrary to the **Criminal Code**. Apparently Gibson ran a brothel in Lockport, New York, and she was travelling to New York with a seventeen-year-old woman, Ida Dawson, intending to install her as an inmate there. The police had caught them, however, and arrested them before they could cross the border. Wallace Nesbitt, Gibson's lawyer, argued before Mr. Justice John Edward Rose that the commitment was void "by reason of a defect appearing on its face . . . being faulty for duplicity and uncertainty."³¹ The actual conviction read as follows: "unlawfully procuring or attempting to procure a girl of seventeen years to become, without Canada, a common prostitute or with intent that she might become an inmate of a brothel elsewhere." The language of the statute prohibited a broad range of activities such as procuring or attempting to procure "any woman or girl to become, either within or without Canada, a common prostitute"; or procuring or attempting to procure "any woman or girl to leave Canada with intent that she may become an inmate of a brothel elsewhere." Obviously the substance of Gibson's act was covered by the statute. However, the judge discharged her because of the use of the word "or" in the conviction.

The Supreme Court of Canada summed up its approach to the enforcement of prostitution laws in 1882:³²

The desire for shutting up of houses of ill-fame or disorderly houses in any community, and for prevention of crimes generally, is highly commendable, and should be seconded by all legal means, and by the aid of all judicial officers of every rank, but it must be done in such a way as not to violate most valuable and important principles and rules of evidence upon which depend the safety of life, liberty and property.

V. Rehabilitation

The third and final approach taken to prostitution was to focus on the reform of the prostitute herself. The rehabilitation approach consisted of various plans to rescue and

reform prostitutes and to train children in such a manner that they would never enter the ranks of prostitution. This response was initiated by middle and upper class women who took the position that individual prostitutes were blameless for their condition. "Fallen women," they insisted, had been tricked by the deceit and predatory wiles of evil men. They placed the blame for sexual promiscuity squarely on the shoulders of men.³³ Furthermore, from the late nineteenth century onwards, there was increasing acceptance of the notion that women criminals could achieve almost total rehabilitation.

When government officials adopted these views, however, their interpretation of the rehabilitative approach was to build special prisons for women. The hope was that women who were detained there under court order could receive the benefits of special correctional programs. While this approach may have been beneficial for some women prisoners, others were forced to serve lengthier sentences than would ordinarily have been required. This was especially true in certain jurisdictions.

Under special legislation in 1871, the federal government permitted Quebec women who had been convicted of crimes to serve their time in the Quebec female reformatory.³⁴ In most cases the reformatory was merely an alternative to the common gaol. However, the act made it a requirement for women who were convicted under the **Vagrancy Act** more than once to serve their sentences in the reformatory. The distinguishing feature of this rule was that women who were sentenced to the Quebec female reformatory were required to stay there a **minimum of five years**. In contrast, the maximum penalty under the **Vagrancy Act** was six months. Presumably the legislators believed that a longer term in the women's prison would induce women to reform. Similarly, Roman Catholic women from Nova Scotia could be sentenced to serve their term in a reformatory run by the Sisters of the Good Shepherd in Halifax. The minimum term was set at one year, and the maximum at two years.³⁵

The logical extension of the campaign to rescue fallen women was to prevent women from becoming prostitutes in the first place. As Victorian society came to realize the importance of education and environmental influences upon children, the natural impetus in the drive to eliminate prostitution was to focus on adolescent children. Since it was believed that children who were raised by unfit parents in unseemly circumstances could grow up to become social misfits themselves, the legislators began to enact a rash of statutes to remove young girls from the custody of parents who lived in a socially-

unacceptable manner and to transfer them to newly-established industrial refuges for girls.³⁶

None of these rehabilitative measures were successful in eliminating prostitution. In part, this approach failed because it focussed primarily on the lower classes. It was lower class and immigrant families who found their homes invaded and their daughters removed, and it was lower class prostitutes who served most of the terms in the new women's prisons. In part, the failure of this approach was also due to sex discrimination which permitted the detention of women prisoners for longer terms solely because of their gender. The rehabilitative approach was doomed to failure because it did not attack the major causes of prostitution – the inequality of women in Canadian society and the economic stratification which forced some women to sell access to their bodies to satisfy the sexual demands of men.

VI. Native Indian Women

No discussion of the history of prostitution law in Canada would be complete without some mention of native Indian prostitutes. Sexual exploitation of Indian women began with the fur trade and increased as settlement moved further west. James Gray has described the practice of Indian men "squatting with their families" around trading posts, "selling the services of their wives and daughters for pennies with which to buy booze."³⁷ Reverend Samuel Trivett, a missionary on the Blood Indian Reserve near Fort MacLeod in Alberta, charged in the 1880's that Indian girls were being sold into slavery by their parents. "White men came onto the reserve, bought the (Indian) girls, and when tired of them, turned them out as prostitutes into the streets of Fort MacLeod."³⁸

The federal government decided to regulate against the prostitution of Indian women in separate legislation. In 1880, "An Act to amend and consolidate the laws respecting Indians" prohibited the keepers of houses from allowing Indian women prostitutes on the premises.³⁹ There was apparently some controversy over whether Indian men or women could be convicted of being brothel keepers under this provision. To ensure that native Canadians were equally liable to charges, the **Indian Act** was amended in 1884. The amendment specifically stated that keepers of "tents and wigwams" as well as houses fell within the statute.⁴⁰ In 1886 the following provision was also enacted: "Every Indian who

keeps, frequents or is found in a disorderly house, tent or wigwam used for such a purpose . . . shall be liable to the same penalty."⁴¹

The federal government must have decided this latter provision was too harsh on Indian men who frequented or were found on these premises. It repealed the entire section in 1887 and added a new provision meant to apply only to Indian women: "Or who, being an Indian woman, prostitutes herself therein, is guilty of an offence."⁴² When the **Criminal Code** was enacted in 1892, Parliament removed these provisions from the **Indian Act** and inserted them into the code with one alteration. The provision against Indians keeping, frequenting or being found in disorderly houses was reintroduced, but restricted to unfranchised Indian women only.⁴³ This law remained unchanged until 1954 when it was finally eliminated.⁴⁴

VII. Conclusion

The history of prostitution law illustrates that none of the three approaches – regulation, prohibition and rehabilitation – was successful in eliminating the trade in female sexuality because of the pervasive class, race and sex discrimination inherent in their formulation or enforcement. Most blatantly, sex discrimination was evidenced in the failure to enforce these laws against men. Abraham Flexner's 1914 report on prostitution in Europe made the problem only too clear. His analysis showed an unusually complacent attitude toward sex discrimination in the law:⁴⁵

The professional prostitute being a social outcast may be periodically punished without disturbing the usual course of society . . . The man, however, is something more than a partner in an immoral act: he discharges important social and business relations, is as father or brother responsible for the maintenance of others, has commercial or industrial duties to meet. He cannot be imprisoned without deranging society.

Women of the time recognized the injustice of this kind of thinking. One striking illustration of what prostitutes themselves thought was recorded by Josephine Butler, a feminist activist who fought for their cause in England in the nineteenth century. Butler preserved the following statement from an extremely angry prostitute:⁴⁶

It is **men**, only **men**, from the first to the last that we have to do with ! To please a man I did wrong at first, then I was flung about from man to man, then police lay hand(s) on us. By men we are examined, handled, doctored, and messed on with. In the hospital it is a man again who makes prayers and reads the Bible for us. We are up before magistrates who are men, and we never get out of the hands of men.

CHAPTER 2

PROSTITUTION AND THE LAW SINCE 1972*

It is important to state at the outset that prostitution *per se* has never been a crime in Canada. The receipt or payment of money for sexual acts has never been and is not now prohibited. Prostitution has been and continues to be attacked indirectly, however. From 1869 to 1972 the **Criminal Code** essentially made it an offence for a prostitute to be in a public place for the purpose of prostitution. Section 175(1)(c), commonly referred to as "Vag. C.," stated that "...everyone commits a vagrancy who...being a common prostitute or night walker was found in a public place and when required failed to give a good account of herself." This section of the **Criminal Code** represented the era when prostitution was a crime of status – the prostitute's status was at issue because she had to explain her presence in a public place, while other persons did not have to do so.

In 1972, "Vag. C" was repealed and the present Section 195.1 was enacted. S. 195.1 makes it an offence to solicit anyone in a public place for the purpose of prostitution. Again, the act of prostitution is not an offence, but the means of obtaining customers in public is. Judicial interpretation of S. 195.1 has made it difficult to use this section successfully which has led to the use of other sections of the Code, such as the Disorderly Conduct sections, to curtail the most obvious aspects of prostitution. Because these sections were intended to solve other problems, however, their application to prostitution remains strained.

Community groups and police departments have lobbied for a change in the law so that arrest and conviction of prostitutes plying their trade in public areas would be easier. When the federal government did not respond, various municipalities enacted by-laws broad enough to solve the problems presented by S. 195.1. Had these by-laws been upheld, in theory at least they could have eradicated street prostitution.

From the outset, the laws dealing with prostitution have been developed to deal with specific problems as they arose. Reluctance on the part of legislators to make prostitution itself a crime or to deal with the legislation as a whole has led to a plethora of prohibitions surrounding the act of taking money for sex. As will be seen, these

* Prepared by Priscilla Platt, Member of the Ontario Bar

prohibitions have grown so numerous and complex that one is left wondering what is legal about prostitution.

I. The Prostitute as Public Nuisance

a) Soliciting

The wording of Section 195.1 has remained unchanged since its enactment in 1972. It states: "Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction." Between 1972 and 1978, however, the judicial pronouncements on the meaning of the term "solicits" were many and varied.

In 1975, the Ontario Court of Appeal ruled in **R. v. Rolland**,¹ that a "wink" was **not** sufficient for soliciting to have occurred. The Court indicated that, "Even if the word 'solicit' is employed outside the context of prostitution it carries the meaning of importune Prostitution is not criminal under the Code but the evident intention of Parliament is to abate the nuisance which the practice may occasion."²

In 1974, the British Columbia Court of Appeal in **R. v. Edwards**,³ held that **all** conduct related to soliciting, including negotiations subsequent to the initial contact, must be considered. As a result, a conviction was upheld in which the appellant nodded to a man in a car, he nodded back, she entered the car and a conversation as to price and place ensued. The Court acknowledged that "importuning" was required but felt that these facts amounted to importuning. Later that year, the same Court in **R. v. Phillips**,⁴ held that a consensual conversation initiated by the appellant (that is, by the prostitute) amounted to "importuning" and therefore warranted conviction.

The Alberta Supreme Court, Appellate Division, in 1977 disagreed with this interpretation of the term "solicit." The majority held, in **R. v. Paterson**,⁵ that a conviction was warranted on the basis of a consensual conversation initiated by the appellant asking an undercover police officer if he "wanted some company."⁶ The majority reviewed the dictionary meanings of "solicit" and held that "To give a practical effect to those

definitions . . . to 'solicit' means no more than conduct which can be construed as an invitation extended by a prostitute to provide a sexual service."⁷

In 1978, on the other hand, the Supreme Court of Canada, in **R. v. Hutt**,⁸ held that soliciting required pressing or persistent behaviour. Mr. Justice Spence stated that the history of the legislation "indicates that Parliament wished to require some acts on the part of the person (prostitute) which would contribute to public inconvenience . . ."⁹ The facts of the case, which were that the appellant from the sidewalk smiled at an undercover officer who was in his vehicle, that she then approached the vehicle and got in, and that they then had a conversation concerning the act of sex, the price and the place, did not therefore constitute soliciting.

The importance of this decision lay not only in the definition of soliciting as "pressing or persistent" conduct, but in holding that these facts did **not** disclose the prohibited behaviour. However, although it described what soliciting was not, the Supreme Court of Canada did not describe a scenario in which the offence of soliciting **would** occur. Therefore the question of what is a public nuisance or inconvenience has not been settled. (It is interesting to note that, in 1974, the British Columbia Court of Appeal found that importuning had taken place in **Edwards**,¹⁰ and **Phillips**¹¹ (above) where the facts did not differ substantially from those in **Hutt**.¹²)

Another question was not addressed by the Supreme Court of Canada in **Hutt**. Could a series of approaches to different individuals, none of which was "pressing," become "pressing" as a course of conduct taken in totality? Both the British Columbia Court of Appeal, in **R. v. Whitter**¹³ and **R. v. Galjot**,¹⁴ and the Alberta Court of Queen's bench in **R. v. Shanks**,¹⁵ agreed that the soliciting must be done to one individual, adopting a strict interpretation of the words "solicits any person" in Section 195.1. One year later, the Supreme Court of Canada in **R. v. Whitter**¹⁶ and **R. v. Galjot**,¹⁷ upheld that view. Mr. Justice McIntyre stated for the majority¹⁸ that if this course of conduct is a nuisance to persons other than the individual approached, legislative change would be required to make that behaviour an offence.

Hutt¹⁹ also left undecided the question whether prospective male customers could be guilty of ". . . (soliciting) any person in a public place for the purpose of prostitution."²⁰ The issue remains, what is prostitution? Is it only the selling of an act of sex, or could it

be the purchasing as well? The issue of whether a male prostitute could be convicted under this section has also been the subject of judicial comment.

In 1978, the British Columbia Court of Appeal in **R. v. Dudak**²¹ held that the prospective customer could not be found guilty of soliciting because the "purpose of prostitution" meant the **seller's** prostitution. The majority indicated²² that no comment was being made concerning possible convictions of male prostitutes under this section. Approval was given to an earlier decision of the British Columbia Supreme Court, however, in **R. v. Obey**,²³ which held that a male prostitute (i.e., seller) could be found guilty of soliciting.

In Ontario, in **R. v. Patterson**,²⁴ His Honour Judge Clunis held in 1972 that males could not be prostitutes because dictionary meanings of prostitutes dealt only with females! Happily, the Ontario Court of Appeal in **R. v. DiPaola**,²⁵ and **R. v. Palatics**²⁶ held that the **Patterson**²⁷ and **Dudak**²⁸ rulings were wrong. The majority felt that the section was broad enough to include both male customers soliciting another person for the purpose of prostitution. The term "prostitution" was given a broad interpretation which encompasses both the buying and selling of an act of sex. No appeals are pending in the Supreme Court of Canada on these issues, so the matter remains undecided. It is important to note that **Bill C-127**,²⁹ proclaimed January 4, 1983 in Section 11 adds a new definition to Section 179(1) of the **Criminal Code**. It states that "prostitute means a person of either sex who engages in prostitution."³⁰ This amendment quiets some of the controversy.

Hutt³¹ raised, but did not decide, a third issue. Section 195.1 requires that the soliciting be done "in a public place."³² Section 179(1) of the **Criminal Code** defines "public place" and "place" for the purposes of Part V (to which S. 195.1 belongs):

'public place' includes any place to which the public have access as of right or by invitation, express or implied . . . 'place' includes any place, whether or not

- (a) it is covered or enclosed,
- (b) it is used permanently or temporarily, or
- (c) any person has an exclusive right of user with respect to it.

In the circumstances of the Hutt case,³³ the undercover police officer was seated in his vehicle when he saw Ms. Hutt. She smiled at him and he smiled back.³⁴ Ms. Hutt then approached the car, opened the passenger door and sat in the front seat. She then asked

him if he wanted a prostitute, and discussed the price, etc. Mr. Justice Spence, for the majority, in his judgement³⁵ indicates that the car is **not** a public place and that in this case the conversation, or solicitation in its widest sense, took place wholly within the vehicle. However, since that issue was not one of the grounds of appeal, this comment remains **obiter dictum** (a comment "by the way"). Therefore, the determination that a car is not a public place, while very persuasive to lower courts, is not binding authority.

The question of whether a motor vehicle is a public or private place is much disputed. Since **Hutt**,³⁶ the British Columbia County Court of Cariboo in **R. v. Wise**³⁷ in 1982 chose not to follow Mr. Justice Spence's **obiter dictum** concerning the character of motor vehicles. This case concerned a charge of indecent act S. 169 where, under the definition section S. 138, "public place" is defined with exactly the same terminology used in S. 179(1) of the **Criminal Code**. Similarly, the Alberta Court of Queen's Bench in **R. v. Figliuzzi**³⁸ and the Saskatchewan Provincial Court in **R. v. McEwen**³⁹ chose not to follow the majority in **Hutt**⁴⁰ on this point. Clearly the issue of whether a car is a private place or can ever become a public place is unsettled, and the line between a solicitation that is done wholly and one done partially in a motor vehicle has not been delineated.

By its wording, S. 195.1 does not make prostitution a crime but protects the **individual** from being persistently bothered by prostitutes, and perhaps protects females from being harassed by would-be male customers to engage in an act of prostitution.

For the community, the problem with street prostitution is that very little of the "solicitation" can be characterized as "pressing or persistent."⁴¹ Therefore the late night activity, the traffic, the honking of horns and general noise that are likely to be associated with street prostitution cannot be curtailed through use of S. 195.1.

b) Disorderly Conduct

Part IV of the **Criminal Code** deals, among other things, with disorderly conduct. The material aspects of Section 171, for our purposes, states that one who

171.(1)(a) not being in a dwelling house causes a disturbance in or near a public place,
 (i) by . . . screaming, shouting, swearing . . . or using insulting or obscene language
 (iii) by impeding or molesting other persons . . .
 (c) loiters in a public place and in any way obstructs persons who are there, or
 (d) disturbs the peace and quiet of occupants of a dwelling house by discharging firearms or by other disorderly conduct in a public place . . .
 is guilty of an offence punishable on summary conviction. 1953-54, c.51, s.160; 1972, c.13, s.11.
 (2) In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)(a) or (d) was caused or occurred. 1974-75-76, c.93, s.9.

Some of the problems to the community caused by street prostitution might be controlled through this section if it were rigidly enforced. On the plain meaning of the words used, the prostitute who stops person after person on the street, as in **R. v. Whitter**⁴² and **R. v. Galjot**,⁴³ could well be contravening S. 171(1)(a)(iii), impeding, or 171(1)(c), loitering, and perhaps 171(1)(d), disorderly conduct. Subsection (2) of Section 171 makes convictions more likely under paragraphs (a) or (d) because a police officer's evidence can be used to determine whether a disturbance occurred.

While courts have from time to time restricted or enlarged the plain meaning of Section 171, no Supreme Court of Canada decision has dealt with the question of whether this section applies to street prostitution.

As to Subsection (a), the Ontario Court of Appeal in **R. v. Berry**⁴⁴ recently overturned a previous decision of the Ontario Supreme Court, in **R. v. Goddard**,⁴⁵ in holding that an "affray, riot or unlawful assembly" did not have to take place for a disturbance to have occurred. Disturbance was to be given its plain dictionary meaning. Nevertheless, subsection (a) is not frequently resorted to in circumstances of street prostitution, however. It appears that the "impeding" subsection would be most applicable, but the other modes of causing a disturbance listed in the subsection could also be used to minimize community inconvenience.

Subsection (c) of Section 171 is the one most commonly used to curb public soliciting. It should be noted that a "disturbance" is not required in this subsection. According to the section one must "loiter" and "obstruct."

The term "loiter" has caused much difficulty because it is not defined in the **Criminal Code**, and therefore dictionary meanings prevail. The dictionary meanings define a loiterer as one who is idle, or one who saunters, lingers or lags behind. Usually the evidence in these cases describes a person who is active, quick, aggressive and certainly single-minded, or goal-oriented. A conviction appeal was successful in **R. v. Munroe**⁴⁶ and in **R. v. Kleinsteuber**,⁴⁷ where the prostitutes were not seen by the courts to be "loiterers" as in the dictionary definition.

The term "obstruct" has caused a similar problem because the term is not defined in the **Criminal Code**. Dictionaries have again been resorted to in **R. v. Munroe**.⁴⁸ His Honour Judge Matlow agreed with the decision in **R. v. Hurley**⁴⁹ in finding that "obstruct" meant to block or persistently oppose. He found, therefore, that a question asked to a passerby concerning prostitution did not amount to an obstruction. His Honour Judge Matlow, in **Munroe**,⁵⁰ went on to say:

It is obvious that this case and those referred to above are indicative of an approach that is being taken to combat harassment of male persons by prostitutes. However, in my view, to employ Section 171(1)(c) of the **Criminal Code** as a blanket weapon is an abuse of the process and should be discontinued. If the various law-making bodies chose not to legislate against this type of conduct expressly, then the public and the law enforcement agencies will simply have to learn to tolerate it.

He went on to liken these situations to charitable and political organizations which approach pedestrians on public streets, and held no criminal act was being committed.

It has also been argued with respect to this section that there can be no "obstruction" if the behaviour falls below that which is required for soliciting, i.e., if there is no persistence. The argument is that in **R. v. Hutt**⁵¹ the Supreme Court of Canada held that this behaviour was not a nuisance unless it was persistent. Therefore it could not be an obstruction if it was not persistent. This argument was successful in **R. v. Shewchuk**.⁵²

The term "obstruct" is also used in S. 118 and S. 127 of the **Criminal Code** regarding obstruction of police and of justice. There as well the judicial definitions are vague. In England, obstruction of the police (S. 118) is defined very broadly as that which makes it more difficult for the police to carry out their tasks.⁵³ In Canada, the British Columbia Court of Appeal in **R. v. Long**⁵⁴ held that an obstruction must amount to unreasonable interference. Later, that same court in **R. v. Westlie**⁵⁵ went further in stating that there must be a complete frustration of purpose for an obstruction to occur. Clearly, judicial definitions of obstruction vary. For this reason its applicability to street prostitution remains unsettled.

Despite its apparent applicability, the problems inherent in Section 171 make it difficult to apply efficiently. It is probably true in practice, however, that in most cases the prostitute does not have to approach passersby – she is approached by them. That is not to say that it does not happen. Section 171(a) may be applicable in cases where the prostitute or customer approaches persons in a random and continual fashion, or where there is unusual noise associated with this activity.

II. The Prostitute and Private Property

a) Keeping a Common Bawdy House (S. 193)

There is a general prohibition in the **Criminal Code** against resorting to a specific place on more than one occasion for the purpose of prostitution. It would appear that it is the character of the property that is being protected because the prohibition has to do not with performing the act itself on the premises, but with performing the act on **that** premise more than once. Indeed, Section 193(3) of the **Criminal Code** states that once a person is convicted of keeping a common bawdy house, notice of that conviction **must** be served on the "owner, landlord or lessor . . . or his agent."⁵⁶ Section 193(4) indicates that if notice has been served and yet the act persists, the owner, landlord, etc., "shall be deemed to have committed (the offence of keeping) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence."⁵⁷

Also of note is Section 193(2)(c) which makes it an offence punishable by summary conviction for one who, as an "owner, landlord, lessor, tenant, occupier, agent or

otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy house."⁵⁸ It is apparent, then, that if the owner, etc., even knowingly permits the activity to continue, he or she risks conviction. Thus the character, reputation and, more importantly, the property values of the neighbourhood are protected.

Section 179 defines "common bawdy house" as a place that is "(a) kept or occupied, or (b) resorted to by one or more persons for the purpose of prostitution . . ."⁵⁹ The leading case on the interpretation of that definition is **Patterson v. The Queen**.⁶⁰ The facts in that case were that two undercover police officers encouraged a woman to bring a friend (another woman) and for all to meet at her home for acts of prostitution. The woman agreed, and upon all arriving at the suburban premise, in a quiet residential neighbourhood, the women were charged with "keeping" under Section 193(1). The Supreme Court of Canada ultimately directed a verdict of acquittal. Mr. Justice Spence for the majority indicated that, for a finding of guilty to be held, there must be evidence of one of three types, namely:⁶¹

Firstly, there has been actual evidence of continued and habitual use of the premises for prostitution . . . Secondly, there has been evidence of the reputation in the neighbourhood of the premises as a common bawdy house . . . or thirdly, there has been evidence of such circumstances as to make the inference that the premises were resorted to habitually as a place of prostitution a proper inference for the Court to draw from such evidence.

Clearly, once is not enough. There must be some evidence of habitual use. The Ontario Court of Appeal in **R. v. Ikeda and Widjaja**⁶² recently held that twice in the same room on **one night** was not enough. Twice on two separate nights may be enough, but the cases have not specifically focussed on the number of times required for "habitual use" to have occurred. However, one can safely assume that the prostitute who resorts to one premise on more than one day for the purpose of prostitution runs the risk of conviction. As a matter of practice, the reputation of the premises alone is deemed not to be sufficient to base a conviction. Normally, actual evidence exists of the use of the premises for the purpose of prostitution on at least one occasion, usually given by **agents provocateurs** or undercover police officers. Following that, testimony concerning evidence of reputation, or of circumstances from which an inference could be drawn, is given. The circumstances usually amount to surveillance indicating the number and frequency of persons entering and leaving the premises. Whether this evidence is sufficient depends on the trier of fact,

which in this case would be a magistrate in provincial court. (It should be noted that these offences are tried in lower courts because, while "keeping" is an indictable offence, Section 483(c) provides that S. 193 is in the absolute jurisdiction of the magistrate.)

It is clear that, in Canada, one female resorting to a premise on more than one occasion for acts of prostitution with men may result in that premise being characterized as a "bawdy house." Further, the Supreme Court of Canada, in **The King v. Betty Cohen**,⁶³ in 1939, found that habitual use by one woman of her own premises for purposes of prostitution was sufficient for a conviction to be made for the offence of keeping a common bawdy house. Mr. Justice Kerwin stated:⁶⁴

Prior to 1907, a common bawdy house was defined by S. 225 of the **Code** as 'a house, room, set of rooms or place of any kind kept for the purposes of prostitution', but in that year . . . the section was repealed and a new one enacted in the same terms but with the addition . . . 'resorted to by one or more persons.' These added words . . . cover . . . the 'present case (of) . . . habitual occupation of the room for the purpose of prostitution.

The law in England developed differently. Section 33 of the **Sexual Offences Act, 1956**,⁶⁵ states that "It is an offence for a person to keep a brothel or to manage or act or assist in the management of a brothel." In 1964, the Divisional Court in Britain in **Gorman v. Standen** and **Palace-Clark v. Standen**⁶⁶ upheld an earlier English decision in **Singleton v. Ellison**, 1895,⁶⁷ concerning substantially the same section, wherein it was found that a bawdy house was in essence a place resorted to by both sexes for the purpose of prostitution. It was felt, therefore, that one woman receiving a number of men did not come within the definition.⁶⁸

Much judicial attention has been given to the word "place" used in the S. 179(1) definition of "bawdy house." "Place" is defined in S. 179(1) as ". . . (including) any place, whether or not, (a) it is covered or enclosed, (b) it is used permanently or temporarily, or (c) any person has an exclusive right of user with respect to it."⁶⁹ The definition is broad, and generally speaking the courts have given the term a liberal interpretation. One recent example is of interest because of its potential effect on street prostitution.

The Ontario Court of Appeal, in **R. v. Pierce and Gollaher**,⁷⁰ held that a parking space habitually resorted to by a prostitute in various motor vehicles belonging to her customers

was a "place" for the purposes of the definition of "bawdy house" in Section 179(1). Mr. Justice MacKinnon, A.C.J.O., for the majority, stated that⁷¹

any defined space is capable of being a common bawdy house, if there is localization of a number of acts of prostitution within its specified boundaries. This does not mean that acts of prostitution must take place in every nook and cranny of the defined place for it to be held to be a common bawdy house although it obviously must take place within a reasonably substantial portion of the defined place.

Notwithstanding that finding, both the accused were acquitted because they were not held to be "keepers." Section 179(1) defines "keeper" as a person who,

- (a) is an owner or occupier of a place,
- (b) assists or acts on behalf of an owner or occupier of a place,
- (c) appears to be, or to assist or act on behalf of an owner or occupier of a place,
- (d) has the care or management of a place, or
- (e) uses a place permanently or temporarily, with or without the consent of the owner or occupier.⁷²

In **R. v. Pierce and Gollaher**⁷³ it was held that the apparently wide definition of "keeper" in S. 179(1) was necessarily restricted by the wording in S. 193(1) to Ss.(4).⁷⁴ In following a decision of the Supreme Court of Canada regarding keepers of a common betting house,⁷⁵ Mr. Justice MacKinnon held that some degree of control is required to found guilt under S. 193. He stated that⁷⁶

If the respondents had been shown to have had a rental agreement with regard to a parking space, or had the benefit of one in connection with their apartment rental, or had sought to keep others out of the parking lot even though they were trespassers themselves, this would show some control or management or direction of the place necessary to found a conviction for the offence charged.

It was added, however, that these persons could have been convicted of being inmates of a common bawdy house, (S. 193(2)(a)), if they had been so charged. It is also true that any person found in a bawdy house without lawful excuse can be convicted under S. 193(2)(b).

b) Municipal By-laws

Under pressure from residential and business communities to stop "street" prostitution, municipalities have enacted by-laws that prohibit persons from being on the street for the purpose of prostitution. Each provincial legislature has authority to regulate in matters of concern to the province pursuant to S. 92(8), (9), (13), (14), (15) and (16) of the **British North America Act**, 1867,⁷⁷ now the **Constitution Act**, 1982. Provinces can, through legislation, delegate to the municipalities the authority to legislate in the same general areas covered by the provincial jurisdiction in matters of concern to those municipalities. The matters in which provincial legislatures or their delegates regulate must not conflict with the powers given the federal Parliament by virtue of S. 91 of the **Constitution Act**, 1867.⁷⁸ For our purposes the material section is S. 91(27), which gives exclusive power to the federal government to legislate in the area of Criminal Law (i.e., peace, order and good government). While several municipalities have enacted by-laws concerning street prostitution, only two decisions from appeals courts have been reported – one from Quebec, the other from Alberta. These decisions come to two different conclusions concerning the validity of this legislation. The Quebec Superior Court ruled that the Montreal by-law was not valid (**Goldwax v. City of Montreal**).⁷⁹ The Alberta Court of Appeal ruled, in **R. v. Westendorp**, that the Calgary by-law was valid.⁸⁰ A final decision on the validity of municipal by-laws dealing directly with prostitution was made by the Supreme Court of Canada in **Westendorp v. The Queen**.⁸¹

The only issue addressed by the Court was the constitutional issue. It was assumed that the by-law was authorized under the enabling provincial legislation. In holding that the by-law was "... **ultra vires** as invading exclusive federal power in relation to Criminal law,"⁸² Mr. Justice Laskin stated that, "If a province or municipality may translate a direct attack on prostitution into street control through reliance on public nuisance, it may do the same with respect to trafficking in drugs..." He concluded that the control or prohibition of prostitution by municipalities "offends the division of legislative powers."⁸³ That is, municipal by-laws dealing directly with prostitution infringe upon the powers that are properly held by the federal government. In case of overlap, the federal rights and powers prevail.

It now seems clear that any changes in this area will have to be changes in the **Criminal Code** made by the federal government.

As a consequence of this Supreme Court decision, the Standing Committee on Justice and Legal Affairs resumed consideration of its Order of Reference respecting soliciting for the purpose of prostitution. Its final recommendations came out on March 24, 1983. They were:

- i) that the soliciting section (S. 195.1) be amended to remove the uncertainty as to whether clients are liable to prosecution;
- ii) that a new offence be added consisting of the offering or the acceptance of an offer to engage in prostitution in a public place;
- iii) that the definition of "public place" be amended to include vehicles in public places, and private places open to public view;
- iv) that a new offence of offering or accepting an offer to engage in prostitution with a person under 18 be enacted; and
- v) that the operation of the proposed amendments be reviewed by a committee of the House of Commons within three years of their coming into force.⁸⁴

The effect of these changes, if passed, would be to make it easier to enforce the soliciting section – in other words, to prosecute prostitutes and customers soliciting in public. On February 7, 1984, Justice Minister Mark MacGuigan tabled in the House of Commons proposals to amend the **Criminal Code** in relation to prostitution and pornography. They did not at all resemble those recommended by the Justice Committee in March.

MacGuigan's proposal with regard to the soliciting section (195.1) included two minor amendments: one that would ensure that the offence applies to anyone who solicits, whether it be the prospective customer or the prostitute, and a second which would include within the definition of "public place" a motor vehicle in or on a public place.⁸⁵

He also announced the creation of a special committee, chaired by Mr. Paul Fraser, to make further recommendations on both prostitution and pornography. The terms of reference include considering prostitution and the exploitation of prostitutes, examining the problem of access to pornography and its effects, and looking at the experience of other countries in their attempts to deal with prostitution and pornography.

The Fraser Committee has been holding public hearings in all the major cities across Canada. In further support of the committee's work, the Department of Justice will be

conducting research to obtain empirical data. The committee is to report its findings no later than December 31, 1984. Undoubtedly the final versions of the **Criminal Code** and municipal by-laws relating to prostitution will then follow.

c) Trespassing

Provincial trespassing legislation has been enacted to protect private property. Most of the legislation provides for notice to be given to unwanted parties who thereafter can be arrested if found on the premises. In Ontario, the **Trespass to Property Act**, 1980⁸⁶ is used frequently to keep prostitutes out of hotels. Once notice is given, the person who returns to that premise may be arrested and is liable on conviction to a fine of up to \$1,000.

III. The Prostitute and Sexual Acts in Public

It is apparent that prostitutes may have difficulty if they resort to private property for sexual acts. They may also have difficulty if they do not. S. 169 of the **Criminal Code** states that "Everyone who wilfully does an indecent act (a) in a public place in the presence of one or more persons, or (b) in any place, with intent thereby to insult or offend any person, is guilty of an offence punishable on summary conviction." Therefore if a sexual act is done in a car, which may or may not be a public place for the purposes of this section, or in a park, field or alleyway, this section may be applicable. In Toronto, it is well known that this section is used against both prostitutes and their customers.

Further, S. 157 makes it an offence to commit "...an act of gross indecency with another person." Exceptions to this include consensual acts done in private between persons over the age of 21 (see S. 158). Acts are deemed to be public, however, if they are done with more than two persons. This section could be applicable, therefore, depending on the sexual act and the circumstances.

It should be noted that where an undercover police officer is the potential customer and the "grossly indecent" act is not committed, the police can still charge the prostitute under S. 422 of the **Criminal Code**.⁸⁷ Section 422 states that it is an offence to "counsel,

procure or incite" another to commit an offence. The caselaw appears to suggest that the Crown does not have to prove the recipient of that counselling was influenced by it, as was held by the British Columbia Court of Appeal in **R. v. McLeod et al.**⁸⁸ This would seem to sanction undercover investigations. Moreover, the Supreme Court of Canada in **Brousseau v. The King**,⁸⁹ a bribery case, defined "counselling" rather broadly to include "advise" or "recommend." Therefore the suggestion by a prostitute that certain sexual acts be done with more than two persons may be illegal. Similarly, where one of the parties is under 21 years of age certain sexual acts may contravene S. 157 (gross indecency).

IV. Prostitute as Victim

The major concern in this area is for the young prostitute. **Bill C-127**,⁹⁰ proclaimed January 4, 1983, preserves S. 146 of the **Criminal Code**, making it an offence to have sexual intercourse with a female person under the age of 14 years. By virtue of S. 5 of **Bill C-127**, the consent of that young girl is no defence. In addition, by virtue of S. 19 of **Bill C-127**, consent is not a defence with respect to a sexual assault on a female under 14 years.

Further, **Bill C-127** creates the offence of abduction for nefarious purposes with respect to persons under 16 years of age. The new Section 249(1) of the **Criminal Code** makes it an offence to "... (take) or (cause) to be taken an unmarried person under the age of 16 years ... out of the possession of ... the parent or guardian." The new Section 250 provides that, with respect to persons under 14 years of age, it is an offence to "... (take), (entice) away, (conceal), (detain), (receive) or (harbour) that person" The new Section 250.5 indicates that with respect to abduction, as above, consent of the young person is no defence. This represents an enlargement of the previous law and a positive step as well. Similarly, the **Young Offenders Act**, 1982,⁹¹ S. 50 makes it an offence under that Act to remove, conceal or induce a young person, defined generally as a person under the age of 18, to leave his or her guardian or to breach a court order or condition of disposition. This provision came into force in April 1984.

Section 33 of the **Juvenile Delinquents Act**, 1970,⁹² contained the offence of contributing to juvenile delinquency, which by virtue of the new Act no longer exists. Section 33 was

of use in circumstances of prostitution if the child was previously chaste, but difficult to apply if not.⁹³ It appears, however, that there is now a hiatus concerning persons 14 to 18 years of age⁹⁴ who no longer benefit from the sections of the **Criminal Code** which apply to those under 14, or the former protection of the **Juvenile Delinquents Act**. **Bill C-127** preserves the concept that consent cannot be a defence with respect to sexual acts done with a person under 14 years of age. Given the new definition of "young person" in the **Young Offenders Act**, 1982,⁹⁵ perhaps the consent issue ought to be addressed concerning those who are older than 14 years but still "young persons" under the new definition.

Irrespective of age, however, the **Criminal Code** attempts to protect prostitutes or potential prostitutes by penalizing those around them who seek to benefit from their acts. **Bill C-127** with Section 13 has enacted a new procuring section, S. 195(1) and (2), to replace the old S. 195. The changes in S. 195(1) involve the use of "person" instead of "female person" in subsection (1), and "male person" in subsection (2).

The new section is broadly worded, and seeks to punish persons who force, persuade or use individuals to perform acts of prostitution and also to punish those who live off the avails of prostitution. In addition, under S. 194 of the **Criminal Code**, anyone who "...knowingly takes, transports, directs or offers to take, transport or direct any other person to a common bawdy house is guilty of an offence punishable on summary conviction."

However, the intended protection provided by these sections may be a mixed blessing for some prostitutes. For example, a prostitute may wish to share an apartment with another person, or she may be married. This could open her friend or spouse to a charge of living off the avails under S. 195(2). In addition the prostitute may have a customer who wishes two women and she may persuade a friend to join them, for gain. Alternatively, she may have two customers and wish to obtain another friend for the second person. She may, then, be contravening Section 195(1). The Supreme Court of Canada has not yet defined "procure" so its meaning remains vague. Nevertheless, some case law has indicated that the element of active persuasion must exist.⁹⁶ In addition, the Alberta Court of Appeal in **R. v. Cline**,⁹⁷ recently held that a person who is already a prostitute could not be procured pursuant to Section 195(1) because the section was intended to protect only those persons not already prostitutes from entering that sort of life. The Alberta Court

of Appeal, in **R. v. Murphy and Bieneck**,⁹⁸ has held that the prostitute on whose avails another person lives cannot be convicted of conspiring with that person to commit the offence in S. 195(2), living off the avails. The determination of these matters, however, will vary from province to province until they are settled in the Supreme Court of Canada or by legislative enactment.

V. The Prostitute and Mobility Rights

It is common practice for prostitutes to be released on bail with conditions that they not be in certain areas of the city, etc., pending trial. It is also common that, on conviction, a term of probation to the same effect will be imposed. The obvious import of these conditions is to prevent the person from resorting to areas of the city normally frequented by street prostitutes. It is an attempt, therefore, to stop her from continuing to be a prostitute, although that endeavour is not illegal.

The terms of bail must be "reasonable" as stated in S. 457(4)(f) of the **Criminal Code** and in S. 11(e) of the **Charter of Rights and Freedoms**, 1982. So too must the terms of a probation order, by virtue of S. 663(2)(h) of the **Criminal Code**. Probation orders which are imposed as additional punishment, rather than "for securing the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offences,"⁹⁹ have been held to be unreasonable. In **R. v. Ziatas**¹⁰⁰ a term requiring the accused to refrain from driving a motor vehicle as a result of a conviction for assault was held to be unreasonable, and additional punishment. Similarly, with respect to bail, the Quebec Court of Appeal in **Re Keenan and The Queen**¹⁰¹ held that reasonable bail conditions are those related to a purpose which would otherwise justify the accused's detention pending trial. This refers to the grounds for considering bail in S. 457(7); that is, to secure attendance in court or to prevent further crime. Therefore a term requiring an inmate of a bawdy house to undergo medical treatment was quashed as being unreasonable.

As to the practice of prohibiting prostitutes from certain areas of the city, there are no reported appeal court decisions directly on point. The **Charter of Rights and Freedoms**, 1982, S. 6, ensures the mobility of the citizen. Section 6(2) entitles every citizen to "pursue the gaining of a livelihood in any province." For now, one can only speculate as to

what effect, if any, S. 6 will have on the validity of these conditions. In **R. v. Bielefeld**, 1981,¹⁰² a condition of release pending trial – prohibiting presence in a certain area of Vancouver – was upheld when a prostitute was charged with theft and possession of a dangerous weapon (a knife). The offences occurred in connection with her activities as a street prostitute. Therefore her banishment, pending her trial, from the area where this activity frequently occurred was seen as a step toward preventing further crime.

With respect to probation orders of this nature, the British Columbia Court of Appeal in **R. v. Clemens**,¹⁰³ struck out an order requiring banishment as a result of a conviction for trafficking in narcotics. It was felt that because the accused had roots in the community and continued to work there, the condition was unreasonable. Similarly, the Saskatchewan Court of Appeal in **R. v. Malboeuf**¹⁰⁴ struck out a term of banishment imposed after a conviction for break, enter and theft. The court felt that banishment could not be justified if it would have no rehabilitative effect because of a lack of community support for an alternative lifestyle in the new setting.

It is clear that, with respect to the offences of soliciting, loitering, or impeding, banishment is imposed to stop prostitution and not simply to stop the offences that may occur as a result of it.

VI. Practical Matters of Importance to Prostitutes

a) Access to Legal Services

While prostitution and the activities related to it may put a great deal of money into a great number of pockets, it may not be particularly profitable for the woman engaged in street prostitution. When she runs afoul of the law, her lack of a secure or adequate income can be problematic. If she is charged with an indictable offence, for example, she qualifies for legal aid. If, as is far more likely, she is charged with a summary offence (loitering, soliciting, etc.) she may not qualify for legal aid and she may not be able to afford her own lawyer. In summary matters, and in the filing of appeals in summary matters, like soliciting, loitering or by-law offences, access to free legal services is discretionary at best.¹⁰⁵ This accounts, in some part, for the high percentage of guilty pleas, and the lack of appeal court decisions in these areas. Furthermore, a record of

convictions makes it far more difficult for a woman to reenter "legitimate" life and work in the community if she chooses to do so.

b) Divorce and Custody Matters

While prostitution is not specifically listed in the **Divorce Act**, 1978,¹⁰⁶ as a ground for divorce nor in the provincial child welfare legislation as a ground for depriving one of the custody of a child, it could well be a factor in the determination by the courts of each of these matters. Between spouses, the prostitution of one parent could well result in custody being granted to the other parent. In single parent situations, provincial children's aid societies who were notified that the parent was earning a living through prostitution could take steps to deprive that parent of the custody of the child. While the act of prostitution is not *per se* illegal, provincial child welfare legislation is largely concerned with the "best interests of the child," so that a moral judgement would have to be made for each case. Clearly, though, as a parent the prostitute runs the risk of losing the custody of her child.

c) The Risk of Deportation

The **Criminal Code** distinguishes between a conviction and a finding of guilt through its provision for a discharge in Section 662.1.¹⁰⁷ The **Immigration Act**, 1976, in discussing persons who cannot gain entry, or persons who having gained entry but not citizenship are subject to deportation, uses the term "conviction."¹⁰⁸ Persons who have obtained discharges for offences are not, then, subject to deportation.

The present legislation in S. 19(2)(a) and (b) provides for possible deportation of landed immigrants or visitors who have been convicted of one offence which may be punishable by indictment, or two summary conviction offences arising out of different occurrences.¹⁰⁹ It is important, therefore, that non-citizens make every effort to avoid conviction.

Where other grounds for non-admission or deportation of non-citizens are concerned, a recent immigration manual, produced by Employment and Immigration Canada, states

that prostitutes cannot be deported for working without a permit because prostitution is not considered legitimate employment.¹¹⁰ The manual goes on to state that the admitted prostitute cannot *per se* be refused admission unless he/she falls within one of the inadmissible classes (i.e., previous convictions, etc.).¹¹¹

d) The Requirement to Declare Income

The **Income Tax Act**, 1970,¹¹² taxes income derived from a business. In 1955, the Income Tax Appeal Board held in **No. 275 v. Minister of National Revenue**¹¹³ that earnings derived from prostitution were business earnings and subject to taxation. This decision has been upheld, in 1964 in **Minister of National Revenue v. Olva Diana Eldridge**,¹¹⁴ and in 1971 in **Madame X v. Minister of National Revenue**.¹¹⁵ Failure to file an income tax return or to disclose income is an offence under the Act.

e) Venereal Disease Prevention

Most provinces have legislation that deals with venereal disease. Often a medical health officer is appointed who has the power to serve notices on persons he or she believes "may" be infected, which direct them to submit to a medical examination. In the major cities in Ontario, for example, a public health official often attends the provincial courts and routinely hands out notices when persons are charged with sexual crimes, particularly prostitution-related offences.

The **Ontario Venereal Diseases Prevention Act**, 1980,¹¹⁶ provides the very severe penalty of a minimum of seven days in jail to a maximum of 12 months incarceration for anyone who fails to comply with the notice to obtain a medical examination.

VII. Being a Prostitute and not Offending the Law

Advertise discreetly in publications; in response to a call from the ad, go alone, each time to a different private location which you do not rent, lease or own; and be sure that you and your customer are over 21 and that no one else is involved. A prostitute who

takes this advice almost certainly ensures that she will commit no offence. However, while this might be her most prudent course of action, it is not likely to be the most lucrative !

CHAPTER 3

PROSTITUTION: WHO, WHAT, WHERE?

To gain a better understanding of the people who participate in prostitution and who are affected by laws and their enforcement, it is necessary to look at what actually goes on in prostitution. It is perhaps not surprising, given the difficulty of studying a phenomenon which is often viewed negatively by large segments of Canadian society and which involves a number of illegal activities, that there is relatively little research material to draw on. More information is available on prostitution in the United States, but since the prostitution-related laws are different, there are limitations to the comparisons that can be made.

The first problem that arises in a study of prostitution is that the people involved are hard to find or unwilling to be observed or interviewed. Those who can be reached more easily because they operate in public places are likely to represent only a small proportion of all those engaged in prostitution-related activities. The statistics that can be gathered from police or court records also deal with only a small, and perhaps atypical, segment of prostitutes, and these records show virtually nothing about the activities of the other participants in prostitution – the customers, pimps and "supporting players" like massage parlour owners, hotel clerks and taxi drivers.

This is not to say that nothing is known about prostitution in Canada or that research is impossible. Several small-scale Canadian studies have observed and interviewed prostitutes in their own milieu, and some prostitutes have been interviewed while in prison for short stays. Some city-based police statistics are available, and a few psychiatric studies have been made of female prostitutes. The descriptive material that follows makes use of these resources as well as consultation and interviews conducted by Council researchers with 65 people (see Appendix A) including working prostitutes and ex-prostitutes, lawyers and police officers, representatives from the Alliance for the Safety of Prostitutes, two concerned residents' groups, four feminist women's groups, two Canadian civil liberties chapters, six advocacy groups which concern themselves with the well-being of prostitutes, and the federal Justice Department.

From these resources a somewhat generalized picture has been drawn of prostitution in Canada today, especially the more public manifestations of it: street-based prostitution

and "massage parlours." Although prostitution goes on as part of "call girl" operations and as a spin-off of escort services, and some forms of brothels do exist in Canada, these forms of prostitution are not dealt with in detail. Information is scarce, and perhaps their much lower visibility causes them to be of less concern to the general public.

I. Street Prostitution

Street prostitution is the most visible form of prostitution. The areas where it occurs are often fairly clearly defined – along a certain street, or in a particular neighbourhood in a town or city. Some areas have both male and female prostitutes and both juvenile and adult prostitutes, while some are frequented by adult females or juvenile males only. While most adult prostitutes are female, it seems from conversations with police, social workers and lawyers who deal with prostitution that juvenile prostitutes are evenly divided between girls and boys. This study will concentrate on adult female prostitution, which may include some women in their later teens. The "who" of street prostitution must include the prostitutes themselves, the customers, and the pimps and others who directly or indirectly link prostitutes and customers and also take a portion of the prostitute's income. The activities of these three groups of actors are affected by the law related to prostitution and by the enforcement of it. Lawmakers, the courts, lawyers and the police form a web around prostitution, now and then closing tight on everyone concerned or, more often, on an individual prostitute or prostitutes as a group. Awareness of this web acts as a constant reminder to the prostitute of her status and the risks she is taking.

II. The Prostitutes Themselves – Who are They?

Much of the information in this chapter has been drawn from sociological studies of prostitutes in Eastville,* Halifax and Vancouver.¹ The studies showed that prostitute women tended to be from a lower socio-economic background, from the working class. (Many people familiar with the world of prostitution feel that there are always some prostitutes who have considerable education and who come from a middle class

* A pseudonym for a mid-sized city in southern Ontario.

background, although these women do not seem to represent a large proportion of prostitutes.) In Layton's study of 100 women in Vancouver it was found that of the 79 women with whom the researcher discussed education and employment experience, 12 percent had completed grade 12, 28 percent had finished grade 8 or less, and the rest had completed grades 9 to 11. Twenty-four percent of the women had never had a regular job, 75 percent had had some experience as typists, tellers, waitresses or baby-sitters. Several had worked as go-go dancers or strippers. All of the women who had been charged for prostitution were on welfare at the time of these interviews by Layton. Thirty-three percent of the women were supporting at least one child.

Closely related to the vocational and economic vulnerability these women experience are their rather tenuous links to an established social identity. They often did not have social insurance cards, driver's licenses, health care cards or credit ratings. All of these take time, money and knowledge that a young or poorly-educated person on the edges of a welfare system often lacks.

The Vancouver, Halifax and Eastville studies vary in what they found to be the prostitutes' average age, but if the results of the three studies are put together the average age is about 23 years for adult women who work the streets. Although there are women of middle age and beyond who work as prostitutes, in general they may have less choice of areas to work and they are generally less able to charge the rate younger women do. In her Vancouver study, Layton was able to determine the age at which 30 percent of the women had begun prostitution. The ages ranged from 12 to 29, with half beginning in their late teens. It is not yet known whether today's juvenile female prostitutes will continue as prostitutes when they become adults. If they do, the average age of introduction to prostitution obviously will decrease.

It would be useful and interesting to have a good understanding of the psychology of those who enter prostitution and of customers and other participants as well, but it is very difficult to do so using Canadian data. A study of 30 street prostitutes in San Francisco found that before beginning a life of prostitution, 80 percent of the women had been victims of physical or sexual abuse. Information on juvenile prostitutes in Canada² suggests similar conclusions. However, it still cannot be definitely stated that this is true for the majority of adult female prostitutes who enter prostitution at a somewhat later point in their lives.

Whatever the social, economic and psychological situation of prostitutes, what does their work consist of? On the street itself, working as a prostitute requires that several related steps must be taken. First, the prostitute must be recognized as being available for sexual acts. Given the laws prohibiting soliciting, a woman may be unwise to physically or verbally accost a potential customer. The fact of being on a certain street at a certain time may be all that is required, but it often takes more to attract customers. For instance, Prus and Irini, who conducted the Eastville study of prostitutes, say that physical appearance and dress are definite signals of availability. They quote one prostitute as saying:³

If you aren't dressed like a hooker, then you might have a problem making money. This one night I had on what I call my 'little girl peasant outfit.' It is kind of cute, white and gingham, but nobody even approached me. I never made a nickel that night, so you think more in terms of something that would be somewhat appealing to people.

It is not always clear to a potential customer which woman is or is not looking for business, as many a woman who has walked through a prostitution area for other reasons can testify. But if the appropriate choice is made, there is a brief verbal exchange over what the customer wants and what he will pay. The bargaining may take place on the street, between car and street, or in a bar or similar place. Once again drawing on a quote from an Eastville prostitute, the exchange is described:⁴

If a car stops, I just ask them what they would like. Or sometimes, I'll say, 'Do you want to go out?' And they will say, like, 'How much?' 'What will you do for thirty?' And what I try to do is to get the price up to \$30 or \$40, although sometimes I'll go as low as \$25 or even \$20. Sometimes, they want to go for the whole night, and then it's like \$100 or more.

In a recent conversation, a Vancouver prostitute describes the pattern for her:⁵

Before we go back to the room, this is how it is: they tell me what they want to spend and then I tell them what they can get for it. As simple as that. If it's okay with them we go off, if it's not okay with them well, 'I'm sorry, you're going to have to find somebody else.' It ends on being very straightforward with people.

In all cases a prostitute must complete these negotiations and be paid before the agreed-upon acts take place. To neglect to do so exposes her to the possibility of misunder-

standing or duplicity which can result in anger, violence and non-payment from the customer. No matter how careful the negotiations are, nearly every prostitute can recount incidents of being subjected to some form of violence even if she had the money and though the negotiations were acceptable to both.

A prostitute naturally tries to sense whether the customer will be a risk. If she suspects the customer's intent or has heard from other prostitutes that he is violent or won't pay, she may be able to end the negotiation by claiming to be busy, not working that night, etc. Before the Hutt decision in 1978, the risk included entrapment by undercover police. The Hutt decision required that a person who solicits for prostitution be "pressing or persistent" in order for police to bring charges. Since the negotiations are usually between a willing customer and a prostitute, there is little reason for either to be very aggressive in solicitation, so the requisite persistence doesn't occur. If an undercover police agent were to try to ask three times for sexual services (courts require three times to meet the minimum standard of a supportable charge), he would be very suspect and entrapment would be much more difficult to carry out.

The rate paid by the customers looking for prostitutes in the streets or frequenting bars and hotels will vary substantially from one part of a city to another. In 1978, in the east end of Montreal, customers paid \$35 minimum compared to a \$50 minimum in the west end. Customers in Vancouver in 1982 were paying \$40 on Skid Road, \$60 to \$80 in the more affluent West End, and \$100 was not an uncommon figure in the Georgia and Hornby area of downtown.⁶

Price, service and conditions having been determined, the customer is directed to a place for the sexual act. This may be a back lane, a parking lot, a vehicle or a room rented for the purpose. If a room is chosen (and this is more likely where the rates are highest), the client pays for the room as well. In 1975, customers were paying \$3 to \$5 for 20 minutes in a Skid Road hotel.⁷ Customers cruising downtown Eastville in 1983 were more likely to be paying \$30 to \$50 for a clean "but not what you would call your classic hotel."⁸ Tourists, businessmen and conventioners most often use their own hotel rooms.

Though the prices vary in the streets, as do the places for the sexual act, the services demanded and the conditions of sale are very similar from one city to the next. Sexual intercourse or fellatio are the most common activities demanded. The exchange is not

leisurely – usually 15 to 20 minutes or one ejaculation, whichever comes first.^{9,10} The women want to leave as quickly as possible with a minimum of personal and physical contact. Fellatio is often preferred by them because in their view it rapidly reduces this contact. They also express a strong aversion to kissing because it is too personal.^{11,12}

I usually spend between 15 minutes and half an hour with a trick (a customer). It doesn't matter if he comes while I am washing him. It just means there is less I have to do with him.

Kissing the dates is one of the things you try to avoid. A lot of them have bad breath, beer or cigarettes or whatever . . . Some of them, before you go up, they ask if you neck or kiss and I just tell them I prefer not to. The way I look at it is, if you are on the pill and if you have a safe, then you have very little to worry about in terms of getting pregnant or VD or whatever, but if you are into kissing a person, then you might spread VD that way. And, like, with oral sex I always use the safe with them . . . I would rather give oral sex than kiss the person because it can be very impersonal, and to kiss, well, that is practically all that you have got left.

The distance the women maintain from the exchange is also reflected in the prostitute's attitude toward her own sexual gratification with customers:¹³

I don't get off with my dates. When I come out to work, my sexual feelings are blocked out, they're not there. I've met some pretty good hunks, that I'd love to – but nothing ! I get along with them tremendously mentally, we yack about everything, but as far as getting off with them goes, it is just not there. When I go home that mental block dissolves and I'm back to being my normal, sensitive, interested-in-sex self.

Of course, acts of prostitution can involve much more than fellatio and sexual intercourse. Some customers want to play out their sado-masochistic fantasies or act upon fetishes of all sorts. Some of these activities can bring the prostitute into real danger of physical injury. Stories of injury incurred by the customer are rare. In general, the higher the risk, or the more time-consuming and complicated the act, the more the prostitute will charge. In any of these negotiations, factors such as the woman's degree of need for cash at that moment, her assessment of the customer's ability or willingness to pay, and both of their senses of the going rate for an act will affect the final price.

III. Massage Parlours

Although there have been and continue to be legitimate massage centres which offer therapeutic massage by qualified personnel, so-called "massage parlours" have at times been used as a base of operations for prostitution. The extent of these non-legitimate parlours and public concern about them has fluctuated. It has sometimes taken awhile for a city to realize the nature of the services being offered, and when it was realized, difficult to prove that prostitution was taking place. Occasionally the police in a city have cracked down on the parlours, often acting in response to citizens' complaints if the parlours became too obvious. The police can act on the basis of violations of the licensing regulations which permitted the parlours to be set up. For instance, Montreal ruled that massages could only be given to a person by someone of the same sex. Police have at times also laid charges against a parlour for being a common bawdy house.

Massage parlours exist in most well-populated areas, dodging from one location to another as legal pressures or strict police enforcement of by-laws impinge upon them. When faced with a city enforcing or strengthening its licensing standards, the massage parlour operation can be moved to a less wary or less restrictive milieu. An article in the **Montreal Gazette** in July 1983 revealed that they were rapidly increasing in the small towns and villages north of Montreal, where there were no by-laws to inhibit the establishment of a massage parlour. Finding customers so close to the metropolitan area of Montreal was no problem either.

The activities of the women, customers and owners or managers of massage parlours are much the same as the activities of street-based prostitution, except for the stationary location and the vague pretence of offering an actual therapeutic massage. There are negotiations as to the act to be bought and the price to be paid, with care taken to avoid running afoul of the law against solicitation for prostitution *per se* or the keeping of a bawdy house.¹⁴

June notes that it was not very difficult to convince the customers to ask for extras since, after a half hour of rubbing by a nude attendant, the customer was usually sexually aroused. Near the end of the massage, while she was placing her hand near the man's genitals, she would ask the customer if he would like a 'local' (a hand massage). When he agreed to this she would mention that certain gentlemen had given her tips of \$20 or \$30 for these extras. At this point the customer would usually proposition her, saying

that he would give her money for a hand massage, thus legally clearing her and the parlour. June said that some of the other girls performed more extensive sexual services such as sexual intercourse and fellatio, but she herself preferred to stay with 'hand jobs.' The girls did not receive a salary, obtaining all their income through 'tips.' June said that she was happy with this arrangement, claiming to make about \$400 to \$500 per week.

In these circumstances, the woman is totally dependent on the customer's willingness to pay an amount above the basic price of a massage. The owners rarely pay salaries, and all transactions are in cash and unrecorded. It can be a lucrative trade for the owners (though they may be seriously hampered if arrests occur), and a classic situation of exploitation of a marginal work force for the women employed in it. The owners operate at the edges of legality. They have no desire for their activities to be documented – there is no payroll and thus no taxes to be declared. There are no true employees so the owners do not have to contribute to benefit packages or pay their share of health plans or unemployment insurance. The marginal worker, who is either working illegally (as illegal immigrants often must, in the garment trade for instance) or engaged in acts of doubtful legal status (like being a "masseuse" and being paid for "extras"), usually does not want to be identified and recorded for working as she does. Nor does she wish to have her tenuous income diminished by a single cent. If a woman who works in a massage parlour has few other marketable skills, she is not in a strong position to press for any of the standard rights of an employee, when to do so would instantly put an end to what work she can get.

The end of her work can come in other ways too, since the owners and customers demand fairly young women. Yet as one social worker familiar with the massage parlour situation in the Quebec villages said:¹⁵

Once this exploitation begins, it never ends. These girls are like ball players, they never think they're going to retire. But their lives are over at 30 when the men are no longer interested. They never seem to save any money. They just get older. That is their tragedy, the woman's tragedy.

IV. The Customers

The typical customer who pays for sexual acts is not, by all reports, an unusual or distinct type of person, or one who would stand out as bizarre, pathetic or over-sexed. No

Canadian studies have looked at the customers, but observers of the street prostitution scene and those who have interviewed street prostitutes describe ordinary men who go to prostitutes for simple reasons: they are just having a "good time"; they want a variety of sexual partners and going to prostitutes is less complicated than establishing sexual relationships with several women they know socially; they want sex outside of marriage but do not want to have claims made upon them by the woman; they have to find "therapy" for problems like impotence.

Customers may also want to experience sexual acts that they cannot have in their other relationships. These acts may be fellatio, masturbating in front of the prostitute, or using obscene language or hearing it used. Some customers want to be physically abused and humiliated or wish to do this to the prostitute. The latter may result in real injury to the woman. Most prostitutes have run the gamut of these preferences, and a few may specialize in customers with "special" expectations. A customer may get to know the external clues or catch phrases or meeting places that signal the availability of a woman who will meet his particular preference.

V. Pimps

The enterprise of providing commercial sex is not the work of prostitutes alone. Others set up the activities of prostitution and share in the profits. Pimps have multiple roles in prostitution. Some of these roles are seen by prostitutes as valuable ones and some are much less appreciated. To society at large, however, and in legal terms, the role of the pimp is universally condemned.

As was true for customers, no study has been made of pimps in Canada (and very little study of them has been made elsewhere). Interviews with police and prostitutes and studies of prostitutes in Vancouver and Halifax, however, suggest that well over half of adult female prostitutes have pimps.

When the word pimp is used, it is important to remember that it covers a range of situations from the pimp as lover to the pimp as business manager or owner. Although the law does not distinguish between the two, prostitutes often do.

According to Section 195 of the **Criminal Code**, a pimp is a person who lives wholly or in part on the earnings of a prostitute. Evidence that a person lives with or is habitually in the company of prostitutes is, in the absence of evidence to the contrary, proof that the person lives on the "avails of prostitution." By definition this includes the boyfriend or common-law husband of a prostitute if he is supported largely by her earnings from prostitution. Some of these "boyfriends" pressure their prostitute-girlfriends to work and turn their earnings over to them, but they are the exception. The boyfriends are not seen as pimps by the women with whom they live. Furthermore, they "do not feel (their lovers) to be (any) more unethical for using their earnings than middle-class men enjoying their wife's second income."¹⁶

At the other end of the scale are the pimps who bring the inexperienced woman into prostitution and keep her there by the use of force. These pimps may demand long hours of work from the woman they control, and they may confiscate virtually all of the money. Interviews with police in one eastern city produced harrowing accounts of enforced confinement and physical and sexual abuse of young women who tried to withdraw from being used in this way, not having realized at first that the attention being paid them went beyond romantic interest. Eventually, after these brutal torture and brain-washing techniques, the woman would give in and carry out her part in the most extreme form of the pimp/prostitute relationship. The number of these extreme cases seems to be very small, however.

VI. Others

A number of other people share the prostitute's activities and her pay. People who link customers to prostitutes by giving information or providing transportation (taxi drivers, for example), may be tipped or require payment from customers before they reach the women. Hotel clerks or landlords or building superintendents who provide rooms for prostitutes' use, or who look the other way, may receive a tip or may demand a set portion of the prostitute's fee. These demands, plus those made by a pimp, can leave the street-based prostitute with very little money for her own needs or the needs of anyone else for whom she may be responsible.

Doctors and lawyers may also play a part in the prostitute's world. A doctor may be called upon to treat her if she is physically abused or contracts a sexually transmitted disease. A woman may need a lawyer to represent her if she is jailed after being charged or if she is up for anything more than a summary conviction (that is, if drugs, robbery, etc., are involved in charges).

VII. The Web of Control – Legal and Social

While accepting pay for sexual acts is not illegal *per se*, the fact that many related activities are illegal makes current law and its enforcement a pervasive part of life for those involved in prostitution. Before the most recent court interpretations, which required the police to prove that a prostitute was pressing or persistent (**Hutt**), or which struck down local by-laws aimed directly at prostitution (**Westendorp**), prostitutes in the streets had to be aware constantly of the possibility of arrest. Each potential customer could be an undercover policeman. Hotels or massage parlours could be raided. For brief times in some cities (Toronto, for example), customers also had to be cautious in their approach to women they thought to be prostitutes.

For several months in the summers of 1979 and 1980, female police officers were used as decoys in the "Track" area around Church and Isabella streets in Toronto to make it easier to arrest customers soliciting them for the purpose of buying sexual services.

These arrests, summary convictions, and the resulting fines made for a revolving door of legal and personal complications for the women. (This was seldom the case for men, either as customers or as prostitutes themselves.) Prostitution was often the woman's major source of income. She needed the pimp to protect her from dangerous customers and to steer her away from situations where she was susceptible to arrest. When the arrest occurred, as it often did, it was often only the pimp who would bail her out of jail. To pay the pimp for this and to pay the court her fine, the woman returned to prostitution. She had few alternatives.

While a woman working as a prostitute may still have to be wary of the legal consequences of her activities, her chances of actual arrest seem to have been appreciably reduced by the recent court decisions.

CHAPTER 4

THE PROSTITUTION DEBATE

Most people in our society will never meet a prostitute or a pimp, or even be aware of it if someone they know is a customer of prostitutes. Yet most people have opinions about prostitutes and prostitution, opinions that may affect the activities of prostitution itself and the laws and police procedures surrounding it.

In general, our society's attitude toward prostitutes, pimps and the other participants in prostitution-related activities has been negative, as was discussed in chapters 1 and 2. There have also been periods when prostitution was of little concern to much of society, or when it was accepted in certain places ("red light" districts), at certain times of the day ("ladies of the evening") or year (at festivals or expositions), or under certain conditions ("camp followers" with armies or concentrations of male labour far from "civilizing" influences).

It is often the appearance of **visible** prostitution in places where it has not been evident before, or evident on such a scale, which triggers a cycle of social and legal pressure against prostitutes and prostitution. Business people may find their area increasingly frequented by prostitutes, pimps, customers and curious onlookers. Access to stores may be obstructed, customers may feel embarrassed or intimidated and stop patronizing an area's stores or restaurants. Property values may go down. All of this may have been tolerated when prostitution occurred on a small scale, but opposed when it went beyond a certain indefinable limit.

People in residential areas who suddenly find prostitution and all its attendant activities in their own neighbourhood often have strong negative reactions. They may disapprove of the whole range of activities. They surely do not wish to own property in an area known to be a centre of prostitution. They may also be intimidated or harassed by prostitutes or – as is more often the case – by curious onlookers who noisily roll by in their cars to look at the prostitutes, customers or residents.

It is exactly this phenomenon – the spread of prostitution into more visible areas, the "better" parts of business or residential areas – which seems to have triggered the latest round of anti-prostitution attitudes and activities in Canada. In order to understand the

most recent chapter in the history of prostitution and find answers to the questions it has raised, it is necessary to look at the responses of all the participants to the social, legal, political and economic pressures placed on them. The actions and reactions of citizens' groups, local governments and police involved in the controversy, as well as civil liberties groups, women's groups and prostitutes' advocacy groups are examined in the following sections.

I. Citizens' Groups

The increased visibility of prostitution in several residential areas across the country has led to conflicts between residents on the one side and prostitutes on the other.

Several residents' groups have been formed. In Halifax, the Downtown Residents Association was formed in January 1982 to deal with many issues of concern to residents in the downtown area – one of which was prostitution. In Niagara Falls, the "Hooker Patrol" was organized in an attempt to stop prostitutes from Buffalo, New York, from crossing the border to do business in their city. In Vancouver, the Concerned Residents of the West End (CROWE) formed their group in July 1981 during a particularly disruptive summer. They maintained that street prostitution, which had formerly been contained within a two-block area, had spread over an area of 20 square blocks, including their own residential area.

CROWE has been the most highly organized and most active of the residents' groups. In May 1982, its members appeared before the Standing Committee on Justice and Legal Affairs, charging that male and female prostitutes were turning their residential area into a drive-in brothel. As Gordon Price, the founder of CROWE, stated during the group's presentation to the Committee: "That is when we got a little nervous. That is when we got frightened. In fact, that's when CROWE organized, when we realized that there was basically no control over the expansion of street soliciting in the West End."¹

Although formal groups have not been organized in most other cities, angry residents and merchants have made their frustrations known through letters and petitions to their municipal governments and police departments. In Toronto, complaints from residents in the Church and Isabella street area, known as "The Track," were raised at City Hall.² In

Victoria, letters of complaint from members of the business community in the downtown core were sent to the Chief Constable.³ Complaints have also been heard in Montreal, Calgary, Regina and Saskatoon. The complaints cover a wide variety of problems:⁴

- (a) traffic congestion and honking horns;
- (b) negative influence on children who play in the area ("They operate right in front of day care centres");
- (c) noise through the night in previously quiet areas;
- (d) harassment of residents by prostitutes and their customers ("Our elderly residents are afraid to go out");
- (e) trespassing on private property ("They use the driveway for a urinal");
- (f) disorderly conduct;
- (g) decrease in confidence in the degree to which police and residents have control over the area;
- (h) decrease in property values;
- (i) increased crime and violence;
- (j) "legitimate" businesses moving out and sex shops moving in; and
- (k) residents moving out and "less desirable" people moving in ("After all, who wants a hooker on their doorstep?").

On the whole, the residents trace the source of their problem back to the 1978 decision by the Supreme Court of Canada regarding the nature of soliciting. The Hutt decision determined that persons must be "pressing or persistent" in their approach before they could be found guilty of soliciting. This court case has indeed made it more difficult to obtain soliciting convictions, forcing police to use other sections of the **Criminal Code** such as loitering, trespassing and causing a disturbance to control the street activities associated with prostitution. Since these measures were not designed to control this type of activity where prostitution is involved, they have not been particularly effective.

The solutions most groups and individuals propose are aimed at strengthening the soliciting section of the **Criminal Code** (Section 195.1) in three areas. They want the section:

- (a) to apply to both customer and prostitute;
- (b) to define a private vehicle located in a public place as a public place; and

- (c) to state that soliciting need neither be pressing or persistent to constitute an offence.

The members of CROWE, however, see the problem somewhat differently. They maintain that "residential living and street prostitution are not compatible,"⁵ arguing that it is the **presence** of prostitutes and their customers which is the problem, **not** the solicitation.⁶ As CROWE stated before the Committee:⁷

The primary point is that street prostitution in a residential neighbourhood is effectively a statement that order and peace cannot be maintained. Each prostitute is like a broken window that says 'no one cares.' How can anyone care about a neighbourhood that allows prostitution to be conducted at all hours of the day, that allows its streets to be commandeered by people who have 'no sense of mutual regard or the obligations of civility?'

Those who do care move out; those who don't move in – and the process of decay accelerates. People use the streets less often; they stay apart from their fellows; they refuse to get involved. Soon it is no longer a neighbourhood – a place of attachments and concern – but simply a place where people live. Such an area is vulnerable to criminal invasion.

The urgency of the residents' petitions and their desire to maintain the quality of their lifestyle is quite understandable. However, the solutions they have proposed to revise the soliciting law and to remove the prostitutes need to be examined for their utility and appropriateness.

First, the Supreme Court's decision on **Hutt** and **Westendorp** are not the only factors which have contributed to the increase in street prostitution. City actions have also increased the visibility of street prostitution. For example, in the late 1970's, Toronto cleaned up the Yonge Street area of body rub parlours, Vancouver police closed the Penthouse area (nightclubs in this area of downtown were "known" for their prostitution activities), and Calgary passed by-laws regarding massage parlours and dating escort services. All of these actions, aimed at decreasing the public nuisance aspects of prostitution, were effective in closing down these activities. They were also effective in sending the prostitutes back out into the streets, particularly residential streets adjacent to the downtown core.⁸ This suggests that effective enforcement of a revised soliciting section would relocate rather than remove the problem.

Residents' groups argue that the problems they are experiencing have been brought on by the influx of prostitutes. If this can be shown to be the case, then at least in the short term, the removal of the prostitutes would help to return the neighbourhood to its original state: noise and traffic congestion would decrease as would crime and violence; property values would stabilize; sex shops would move out and legitimate businesses move back in. However, it is quite possible that sex shops, decreased property values and increased noise and violence can develop in areas that are not "known" for their prostitution-related activities. There can be other important contributing factors, such as zoning and by-laws, tax base changes, development or lack of development. If this is so, then creating laws to solve one kind of problem while affecting the legal situation of all prostitutes wherever they operate may be a misapplication of law.

The solutions proposed by residents' groups cannot and do not take into account the broader social problems underlying prostitution. As CROWE stated in the hearings of the Committee on Justice and Legal Affairs, "We want the hookers to leave the West End. It is not our responsibility as a citizens' group to deal with the larger problem of prostitution."

The larger problems of prostitution – the toleration and even encouragement of depersonalized, commoditized sexual activities, the economic and social vulnerability of women, and the more immediate inequities of treatment of women under the prostitution-related laws – await more encompassing action.

Unless these inequalities are addressed by federal, provincial and municipal governments and social agencies, prostitution and all its "attendant problems" will continue. The solutions suggested by citizens' groups will be effective only if they are supported by broader social programs designed to ameliorate the underlying factors which create and maintain prostitution.

II. Municipal Governments

In response to many complaints from residents, the municipal governments of Montreal, Calgary, Vancouver, Regina, Halifax, Saskatoon and Niagara Falls passed by-laws to regulate the street activities associated with prostitution. The first of these, enacted in

Montreal, made it illegal to remain in a public place (defined as including any place to which the public had access, by right or by explicit or implicit invitation) for the purposes of prostitution, or to approach others for the same purpose in such a place. The Calgary by-law forbade being, remaining or approaching another person on a street for the purpose of prostitution. The Vancouver by-law was more explicit. It forbade a person to sell or offer to sell and to purchase or offer to purchase sexual services in the street. The by-laws were all worded in such a way as to be equally applicable to women and men, whether sellers or buyers of sexual acts.

Although the wording of the by-laws varies, each seeks to regulate the same activities by imposing fines on the persons charged. Fines range from \$100 for a first offence in Calgary to a maximum of \$2,000 for a first offence in Vancouver.

When the by-laws were first enacted they were effective, that is, they reduced the number and concentration of street prostitutes. By December 1982, the police in Calgary had charged 507 people under the by-law and estimated that the number of street prostitutes was down to 30.⁹

During the first month of its enactment, the Vancouver by-law had reduced street prostitution by 50 percent.¹⁰ By November, almost seven months later, it had stabilized at a 40 percent reduction from the time of its introduction.¹¹ The results seem to have been even more striking in Niagara Falls. In his submission to the Justice Committee, the mayor of Niagara Falls stated that, "We have seen an amazing change in the activity on the street. Where there were 40 or 50 girls on a nightly basis, since the by-law was passed two weeks ago we have found it has been reduced and almost eliminated."¹²

Even though the by-laws proved to be an effective method of reducing street prostitution, it soon became apparent that problems were created for the municipalities when the by-laws were vigorously enforced. The by-laws are expensive and awkward to administer (the accused are issued summonses rather than arrested; this tends to overburden the local courts which are obliged to reissue the summons when the accused do not appear in court). They were also expensive in terms of police staffing and personnel needs. (In Calgary, for example, 14 undercover police were working full time on the by-law enforcement.)¹³ The mayors also expressed concern that the widespread application of by-laws would lead to

widely varying standards of public order across the country. It was felt that one common standard was required.

As the enforcement of the by-laws continued, the statistics began to reveal a double standard of enforcement, a pattern already too familiar from the wording and application of earlier laws about prostitution. In Vancouver, for example, 568 charges were laid between April 1982 and January 1983 when the by-law was withdrawn: 53 percent against female sellers, 14 percent against male sellers and only 32 percent against male purchasers.¹⁴ A similar situation occurred in Halifax. Of the 24 persons charged under the by-law between December 18, 1982 and January 25, 1983, 22 were female prostitutes and two were male clients.¹⁵ Given the wording of the by-law, one could logically expect that an equal number of buyers and sellers would be charged.¹⁶ Thus we see that even laws with non-sexist wording can be dramatically eroded in enforcement, in such a way that the woman-as-prostitute is the actual target of legal and social sanctions while the role of the male-as-customer remains virtually unacknowledged and untouched.

The Calgary by-law, which was challenged in the Supreme Court of Canada (**Westendorp vs. The Queen**), was declared **ultra vires** (i.e., going beyond the authority of the municipality) on January 25, 1983. The decision was unanimous. Shortly thereafter, all the other municipalities which had modelled their by-law after the one in Calgary deactivated their ordinances. This decision set in motion further efforts on the part of the federal government to draft acceptable legislation. As noted in chapter 2, the Standing Committee on Justice and Legal Affairs reconsidered the issue of street prostitution. In addition, the Fraser Committee was established to research and elicit public views on prostitution (and pornography). Further proposed amendments of the **Criminal Code** on prostitution may be expected from the Department of Justice.

The drafting of by-laws was not the only way municipalities responded to the complaints of their residents. In Vancouver, for example, certain streets were transformed into mini-parks; barricades were set up on others. The objective was to divert traffic and to make it inconvenient for the customers and "hooker-lookers" to drive around. This did not change the situation much, however.¹⁷

Aside from their local efforts, the major thrust of the municipalities has been to lobby the federal government to strengthen the soliciting section of the **Criminal Code**. Mayor

Harcourt of Vancouver appeared before the Justice Committee both before and after the Supreme Court decision regarding the Calgary by-law.¹⁸ In his first appearance he represented Vancouver and the mayors of nine other cities: Victoria, Calgary, Edmonton, Regina, Winnipeg, Toronto, Montreal, Quebec City and Halifax. He asked to have a law set in place that would apply equally to men and women, buyers and sellers, and that would make it an offence to buy or offer to buy, or sell or offer to sell, sexual services in public places. His second submission was different only in that it included specific suggestions for amending the **Criminal Code**. They included the added specification that a vehicle on a street be considered a public place.*

In both appearances, Mayor Harcourt maintained that no valid argument could be made in favour of permitting the buying and selling of sexual services on the streets of the country. "The streets of our cities are open to all persons, whether residents of those cities or of this country or visitors. It is their right to use the streets without being intimidated or embarrassed."¹⁹

III. The Police

Members of city police forces began petitioning the federal government to clarify the soliciting section of the **Criminal Code** long before either the residents' groups or municipal governments. They argued as early as 1978 that a succession of judicial interpretations had made it almost impossible for them to gather enough evidence to justify an arrest, let alone a conviction.²⁰ They have presented their case to the government on many occasions²¹ and are very distressed that their demands for change have not been met, despite years of protest and what is to them clear evidence that the section is virtually ineffective.²²

The police believe that the seeds of the current problem were sown with the 1972 repeal of the vagrancy section of the **Criminal Code** (Section 175 (1) (c)). According to them, the "effective action against female prostitutes" which this section permitted was weakened

* **Editor's Note:** As previously noted, on October 17, 1983, the City of Montreal passed a by-law which banned any form of soliciting in a public place. This was an attempt to circumvent the result of the Supreme Court decision on Westendorp. As of January 1984, the constitutional validity of this by-law had not been challenged.

when it was replaced by the present soliciting section and was lost altogether when several judicial interpretations narrowed the scope of application.²³

As was discussed in chapter 2, there was a great deal of controversy over the wording of the vagrancy section because it created the "status offence" of being a prostitute in a public place and was aimed solely against women. Women's groups, civil rights groups and the Royal Commission on the Status of Women all spoke out against it and finally secured its repeal in 1972. The new section provided that every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence. At first, this seemed to be an acceptable replacement.

Although the police attribute the systematic destruction of the soliciting section to several cases, the most significant ones are deemed to be two decisions from the Supreme Court of Canada regarding the nature of the offenders' behaviour. The decisions were made in **Regina v. Hutt** in 1978 and in **Regina v. Galjot** in 1981. **Hutt** established the principle that there had to be an element of pressing or persistent behaviour before a person could be charged with the offence of soliciting in a public place. In attempting to surmount this obstacle, police departments evolved a wider interpretation of "pressing or persistent" to include multiple solicitation. This involved charging persons with soliciting when they approached a number of potential customers over a short period of time. The ruling on **Galjot** disallowed this interpretation and stated that pressing or persistent conduct had to be found in the actual approach to each person alleged to have been solicited. As a result of these decisions, it became almost impossible for the police to gather enough evidence to justify an arrest.

The police also argue that provincial appeal court rulings have handicapped them in their attempts to apply the soliciting section to both prostitutes and their customers. The main problem in this instance is that the provincial rulings vary. The Supreme Court of Ontario ruled (in the Di Paola and Palatic cases in 1978) that the customer could be charged; the British Columbia Court of Appeal ruled (in **Dudak**, 1978) that the customer could not be charged. Until the issue is tested at the level of the Supreme Court of Canada or clarified by an amendment, this federal law will continue to be applied unevenly across the country.

The difficulties the police have experienced in making arrests and securing convictions is reflected in the decrease in the number of prostitution offences which have been reported: 2,843 were reported in all of Canada in 1977 compared with only 1,551 in 1981.²⁴ This represents a 45 percent reduction over a five-year period, and is, the police suggest, almost entirely due to the narrow evidentiary requirements of the soliciting section and the subsequent decrease in the number of soliciting convictions they have been able to win. In defence of the latter point, Metro Toronto Police Chief Ackroyd reported that the conviction rate in "The Track" area in downtown Toronto was only 59 percent in 1981.²⁵ "The Track" is primarily residential, with a number of high-rise apartment buildings.

As a consequence of these decisions and their effects, the police are asking for a clarification of the existing law. Their proposal is similar to those made by residents and municipal governments. They want Parliament to enact an amendment that would clearly state that the section refers to both men and women, whether buyer or seller of sexual services, that "public place" be defined to include a means of transportation in or located in a public place, and that soliciting need not be pressing or persistent.

The essence of the police position is that they have great difficulty laying charges with the reasonable expectation of these charges leading to conviction. One way of examining the strength of this claim is to compare conviction rates for soliciting with some other commonplace offences.

The 1981 conviction rate for solicitation in "The Track" in Toronto was 59 percent. In other words, of all the charges laid, 59 percent of the offenders were convicted of the crime. Although this may seem to be a fairly low rate, in fact, as Table 1 shows, it represents a fairly high rate when compared with conviction rates for other crimes.

Table 1
Conviction Rates for Selected Criminal Code Offences in Ontario, 1980

	%	Total
Impaired Driving (Section 234)	2.6	882
Other Driving offences (Sections 233, 325, 238, 239)	24.1	922
Possession of stolen goods (Sections 312, 315)	39.5	4,145
Mischief (Sections 387, 388)	50.8	655

Source: Statistics Canada, Justice Statistics Division, "Criminal Court Statistics."

Table 1 shows that conviction rates for impaired driving and other driving offences were only 2.6 percent and 24.1 percent respectively. Conviction rates for possession of stolen goods and mischief were somewhat higher at 39.5 percent and 50.8 percent but still lower than those obtained for soliciting. It is unclear why police want or expect higher conviction rates for soliciting than for other offences. In terms of victims, impaired driving, mischief, or possessing stolen goods all imply considerable potential danger to persons or property. In the case of prostitution the physical risk is concentrated on the prostitute herself, while in the case of impaired driving, for example, there is far greater risk that the perpetrator could cause harm to others.

The initial application of the current soliciting section of the **Criminal Code** has also brought up the question of uneven enforcement procedures (as did the enforcement of municipal by-laws). There is unequal enforcement from region to region (which should not be the case since the **Criminal Code** is a federal, nationwide code), and uneven enforcement along sex lines.

This uneven application is clearly reflected in the differential arrest rates in Vancouver and Toronto. As table 2 shows, virtually no soliciting charges were laid in Vancouver in a three-year period, although charges were still being laid in Toronto. This is a puzzling difference.

Table 2
Soliciting Charges Laid

	Vancouver	Toronto
1980	8	691
1981	3	649
1982	1	317

Source: Vancouver statistics from letter from R.J. Stewart, Chief Constable, Vancouver Police Dept., August 1983. Toronto statistics, NAWL Newsletter, Vol. 5, No. 2, June 1983, p. 47.

The police have argued that some of this difference is the result of both customers and prostitutes being liable in Ontario. It is interesting to note, however, that this fact is not reflected in the Toronto statistics when they are broken down by sex. Table 3 shows that women are much more likely to be charged than men. Over the four-year period between 1979 and 1982, 71 percent of the charges were laid against women while only 29 percent were laid against men. It is not possible to tell from the police statistics whether the men were soliciting as customers or as prostitutes. Certainly it is virtually unknown for women to be customers for anonymous sexual services. This in itself raises intriguing questions about the differences between men's and women's social and sexual patterns.

Since there is such a large difference in enforcement against men and women in a province where the law has been clearly interpreted to apply to both customer and prostitute, it cannot be assumed that a clarification at the federal level will be reflected in its actual enforcement.

Table 3
Soliciting Charges Laid in Toronto

Year	Male		Female	
	N	(%)	N	(%)
1979	90	21.8	323	78.2
1980	208	30.1	483	69.9
1981	243	37.4	406	62.6
1982	61	19.2	256	80.8
TOTAL	602	(29.1)	1,468	(70.9)

Source: NAWL Newsletter, Vol. 5, No. 2, June 1983, p. 47.

As will become clear in the next section, some groups oppose the position being advocated by residents, municipalities and police. They argue, among other things, that the police proposal would so expand the soliciting section it would amount to a return to the old vagrancy provision ("Vag. C.") with its power to arrest a woman on the basis that she is known to be a prostitute whether or not at that moment she is actually engaged in prostitution. Although the police, residents and mayors are willing to accept this eventuality to maintain control over street prostitution, women's groups, civil liberties groups, and the prostitutes and their advocacy groups are not.

IV. Civil Liberties Groups, Women's Groups, Prostitutes' Groups

Women's groups and civil liberties groups contributed to the report of the Royal Commission on the Status of Women in the earlier struggle to have the "Vag. C" law removed from the **Criminal Code**. (It was replaced by the soliciting section (195.1) in 1972.) Members of many of these organizations are still involved in the continuing prostitution debate and are lobbying for a solution to the current problem that would be both effective and acceptable to all. They argue that a successful reversal of the Hutt decision ("pressing or persistent"), although possibly effective in the short term, would be unacceptable in the long term because it would cause more social harm than it would

prevent. On the whole, they are struggling not simply to maintain the status quo with regard to soliciting, but to have this section and section 193 (keeping a common bawdy house) removed altogether,²⁶ as well as to increase public awareness of the realities of contemporary prostitution.

Two arguments are used by these groups to support their contention that the laws which interfere with prostitution cause more social harm than they prevent. One is civil libertarian: it charges that No. 195.1 and No. 193 cannot be defended on the basis of the principles that should govern the use of criminal law in a free society. The other is commonly referred to as the argument of the equality of women. It is grounded in the notion that the role of women in contemporary prostitution is symptomatic of the social and economic inequalities which confront all women in society today. These arguments are mutually supportive rather than mutually exclusive. The civil libertarians recognize the validity of the latter argument and the women's groups usually begin with the civil libertarian argument before expanding it to include an analysis of the underlying social problems that give rise to prostitution.

a) Civil Liberties Groups

Civil libertarians raise three points in defence of their stand:

- (a) it is improper to criminalize behaviour that is not seriously harmful to others;
- (b) the laws against soliciting and bawdy houses are unfair;
- (c) the social problems (such as public harassment, noise, etc.) which lead to proposals to strengthen the prostitution law should be regarded as problems of public order. Therefore, the use of criminal sanctions is too severe an approach. Other legal remedies, like well enforced by-laws, should do the job.

The first two points are based on what has been called the "harm to others" principle.²⁷ It asserts that a law should restrict individual liberty only if other individuals are in danger of serious harm. The harm must be substantial and must be shown to be causally linked to the activity in question. Moreover, the link must be shown to be "stronger than the link from, say, professional sports to illegal gambling or rock musicianship to illegal drug use. Otherwise the argument would support abolishing professional sport and rock concerts."²⁸

The first issue then becomes whether or not it can be shown that prostitution, or soliciting, or operating a common bawdy house, cause substantial harm to others. A representative of the British Columbia Civil Liberties Association argued before the Justice Committee that it has not been so demonstrated. Several points were made: those distressed by public soliciting (even pressing or persistent soliciting) are not harmed in a sense or degree that would permit legal sanctions to prevent the soliciting; though it may be argued that prostitution causes harm to adult prostitutes, commitment to civil liberties rules out paternalistic criminal legislation (i.e., legislation that would coerce adults for their own good); provincial child protection laws are available to protect minors who may become involved; and other criminal legislation exists to prevent criminal activity which is seen to be linked to prostitution.

Finding no evidence of substantial harm to others, civil libertarians submit that it is inappropriate (improper) to invoke the criminal law to deal with prostitution, the nuisance of pressing or persistent soliciting, or the operation of a bawdy house. Since prostitution *per se* is neither illegal nor harmful, they conclude that it is grossly unfair to deny prostitutes a place of work and a means of acquiring clients.²⁹

In making their third point, that problems raised by street prostitution should be regarded as problems of public order, civil liberties groups argue that most of the remedies are already in place and need only to be enforced:

- (a) Provincial residential tenancy legislation protects the right to quiet enjoyment of one's residential premises. In the event that section 193 is repealed, this legislation along with well developed common law is available to deal with any nuisances arising from the operation of bawdy houses.
- (b) Motor vehicle legislation, municipal zoning by-laws and similar regulatory legislative controls can be used to control any nuisance problems resulting from street prostitution.
- (c) Where serious nuisance problems that amount to criminal behaviour manifest themselves, enforcement of existing sections of the **Criminal Code** can be relied upon. Specifically, Section 171 (causing a disturbance, indecent exhibition, loitering, etc.), Section 169 (indecent acts), Section 305 (extortion), and Section 381 (intimidation) could be used.

b) Women's Groups

Most of the current debate on prostitution has been focussed on the offence of soliciting for the purpose of prostitution, and the difficulties experienced by police when trying to control the activities of prostitutes and the problems associated with prostitution when it occurs in a residential area. Women's groups have tried to refocus the discussion on the broader underlying issues of prostitution. In doing so, they maintain that the soliciting and bawdy house laws are unfair and improper, but also that these laws perpetuate the double standard of sexuality and the socio-economic disadvantages of women. Their argument depends on an analysis of the underlying conditions which lead women (and youth) into prostitution.

Several women's groups appeared before the Standing Committee on Justice and Legal Affairs: the National Action Committee on the Status of Women (NAC), the National Association of Women and the Law, the Canadian Association of Elizabeth Fry Societies and the Toronto Elizabeth Fry Society. Other groups, including the Vancouver Association of Women and the Law, and the British Columbia Federation of Women, submitted their briefs in concert with the British Columbia Civil Liberties Association, under the name of the Vancouver Coalition for a Non-Sexist Criminal Code.

This brief was endorsed by the Vancouver Status of Women, the Status of Women Action Group of Victoria, the Street Walkers and Street Workers Ad Hoc Association of Vancouver,³⁰ the Vancouver Women's Book Store, the Vancouver Elizabeth Fry Society³¹ and NAC.³²

The position taken by all these groups has been essentially the same. They argue that:

- (a) the legislative changes sought by those who would overturn the Hutt decision would lead to the scapegoating of women rather than dealing effectively with prostitution as a social problem; and,
- (b) that the state, if it is truly committed to reducing the problems of public order presently associated with soliciting, must address the socio-economic conditions which lead women into prostitution.

In support of their first point, they argue that overturning the Hutt decision would do several negative things: relocate rather than remove the problem; increase the hazards prostitutes face (they would be forced to rely more on pimps to meet customers); perpetuate the sexual exploitation of poor and untrained women; perpetuate the double standard of sexuality which is already reflected in the **Criminal Code** and its application; and enable the police to question any unescorted woman on the street (as was the case when the "Vag. C" section was in force).

As to underlying conditions, they argue that three major factors lead women into prostitution: the relative poverty of women, the advantageous socio-economic position of men, and the sex role socialization of both sexes. The Vancouver Coalition for a Non-Sexist Criminal Code outlined the recruitment process:³³

For some women in Canada, prostitution offers an income that would not otherwise be possible. Faced with high levels of unemployment, inadequate training and educational opportunities, inequality in the workplace, and insufficient social services, women choose prostitution as a means of earning an income. Economic pressures like these are exacerbated by social factors. Sex role stereotyping encourages girls and women to view themselves as sexual objects dependent on men (and encourages men to expect impersonal sexual services). In addition, studies show that up to 80 percent of prostitutes were victims of incest, rape or other forms of physical or sexual abuse in their childhood. For some women facing these economic and social pressures, prostitution offers a real alternative to criminal activity, welfare, and low-paying menial jobs.

In other words, prostitution becomes an option for women in a society that endorses sexual bargaining and offers limited job options to women.

There is nothing in the description of contemporary prostitution outlined in chapter 3 to contradict this analysis. Nor is it peculiar to Canada. Recent studies in England,³⁴ France,³⁵ and the United States³⁶ have all come to similar conclusions regarding the factors that create and maintain contemporary heterosexual prostitution.

Women's groups argue that what they have observed in the relationships between prostitute and pimp and prostitute and client is an extension of a phenomenon experienced by all women in society – the reality of male control and domination and the vulnerability of all women to male violence.

They submit, in conclusion, that an effective and acceptable solution to the problems caused by prostitution would have to include both the decriminalization of prostitution (i.e., the repeal of the soliciting section and the bawdy house laws) and the development of social programs for prostitutes. One women's group summed it up in this way:³⁷

No campaign to eliminate prostitution (or its attendant problems) will succeed without the establishment of outreach programs to offer support, assistance and tangible resources to those women. Quality unbiased counselling and government-subsidized job skills training and/or education upgrading are equally essential.

c) Prostitutes' Groups

No analysis of the position of concerned groups would be complete without a discussion of the views held by prostitutes' groups. Two such organizations have been formed in Canada, the Committee Against Street Harassment (CASH), and the Alliance for the Safety of Prostitutes (ASP). On the whole, the perspective of these groups on the present situation parallels that of the women's and civil liberties groups. They tend to go one step further in their argument, however, by asserting that prostitutes should be recognized as legitimate service workers with an independent status (i.e., as independent contractors in a decriminalized system).

CASH, organized in Toronto in 1979, was Canada's first organizational voice for prostitutes and other "workers of the flesh" (their phrase), that is, strippers, actresses in pornographic films, nude waitresses, etc. It folded due to lack of support soon after its conception and initial organization. In its short time in the public eye, however, CASH advocated several changes: the removal of soliciting and bawdy house laws from the **Criminal Code**; the recognition of prostitutes as legitimate workers with an independent status; equal police protection for prostitutes and other workers of the flesh; and an end to the use of non-related legislation (i.e., loitering) to control prostitution. CASH also attempted to meet prostitute women's need for support: a hotline was organized to provide immediate assistance to prostitutes in trouble with the law and a streetwalker's guide was published.³⁸

ASP, a Vancouver organization which had its roots in the Street Walkers and Street Workers Ad Hoc Association,³⁹ was founded by Sally de Quadros and Marie Arrington in

June 1982. The group, which operates primarily in the West End, meets every two weeks to provide prostitutes with safety strategies, briefings on the law and prostitutes' rights, and to exchange information about dangerous or potentially dangerous customers. The latter information is then printed in the monthly "bad trick sheet." The sheet includes any useful information the women are able to provide about these men: their physical description, method of approach, means of transportation, and the dangers involved (such as lack of payment, battering and sexual abuse). The organizers are on call 24 hours a day, helping prostitutes through counselling and helping those who have been assaulted.

Although the physical safety of the women (and men) working as prostitutes is ASP's primary concern, it is by no means the only one. ASP is also concerned about attempts to reverse the Hutt decision and about the antagonistic attitude of residents towards their presence in the West End. As a consequence of these concerns, the group has tried to educate the public about the world of prostitution and the conditions which create and maintain prostitution, and to lobby for its decriminalization. They have produced and distributed a pamphlet, marched on city hall during the by-law crisis,⁴⁰ and held an open forum.

This excerpt from the ASP pamphlet outlines some of their concerns:

- Myth:** Prostitutes are not "normal" women and don't lead normal lives;
Fact: Prostitution is a way of making money and surviving, not an identity. Society has carelessly confused prostitutes with prostitution, much as they have confused housewives with housework. Prostitutes have the same needs as do other people. They have a home life, and many have children.
- Myth:** Pimps and prostitutes are natural allies.
Fact: Many prostitutes do not have pimps. Many are allies only in the sense that they are cut off from the rest of society because of their outlaw status.
- Myth:** Pimps are the only men who exploit and have power over prostitutes.
Fact: The police, judges, lawyers, tricks, hotel owners and workers, the porno industry, massage parlour and nightclub owners are the men who most profit from prostitutes and use their power over them.

Myth: Prostitutes degrade women.

Fact: Men degrade women – through rape, battering, insults and by maintaining financial and political power over us.

Myth: All prostitutes have lots of money.

Fact:

1. They are in prostitution because they are poor.
2. After paying fines, lawyers' fees, bail, pimps, cab drivers, hotels, being robbed, etc., there is precious little left. Not to mention a total lack of UIC, medical benefits, Canada Pension Plan or even criminal compensation. For that matter, it's pretty hard to get welfare if you are a known prostitute.

ASP's pamphlet dramatizes the complexity of the situation and the difficulty of finding legal and social answers that will satisfy the concerns of all the participants in the prostitution debate.

CHAPTER 5

CONTROLLING PROSTITUTION: INTERNATIONAL COMPARISONS

Acceptance of prostitution and tolerance of its attendant activities (pimping, patronizing, soliciting, the spread of massage parlours, sexual exploitation of juveniles, etc.) varies from country to country. So do the legal and social systems designed to cope with these problems. They may be directed at prostitutes, pimps and procurers, customers or business owners and managers. They vary from the somewhat effective to the ineffective in achieving their goals and in some cases they exacerbate problems. Although there is considerable diversity in the strategies for controlling prostitution which have been developed from one country to the next, they all fall under one of three basic systems of control: prohibition, regulation or toleration.

Prohibition and regulation have been used in Canada and a number of other countries for a century or more. Toleration, sometimes known as abolition because prostitution as an illegal act is abolished from the statute books, is a relatively new approach. Given the negative attitudes toward prostitution documented in chapter 1, even the possibility of toleration would not have been acceptable in Canada until very recently. It is strongly supported by groups like the Canadian Association of Elizabeth Fry Societies who provide social services to women facing conviction for prostitution-related offences.

Each of the systems may be defined in terms of the way it treats the act of prostitution itself: some make it illegal, some treat it as legal in particular circumstances, and some do not include it in their laws as an illegal act. However, all of the systems include laws against **related** activities which facilitate acts of prostitution. Because of the complexity of prostitution and the variety of social responses to it none of the systems exists in a "pure" form, but in general they may be characterized as follows.

In the case of **prohibition**, the act of prostitution, selling sexual services, is illegal and so are any related activities such as pimping or procuring. Nearly all of the states in the United States, Japan, the Soviet Union and China are prohibitionist in their approach to prostitution. The assumption underlying prohibition is that prostitution is a social evil and no part of it can be countenanced in any way.

Under **regulation**, prostitution is permitted under certain limited circumstances. Attempts are made to licence or otherwise register prostitutes and require them to be monitored and treated for venereal diseases (now designated sexually transmitted diseases – STDs), and to licence some brothels or allow some buildings to be used legally for prostitution. Where regulation is the chosen system, prostitution **per se** is seen as acceptable in strictly defined areas as long as the prostitutes themselves are known and under control. The regulations attempt to minimize the hazards of prostitution: the spread of disease, and the extreme exploitation of women including clandestine importation, exportation and enforced displacement and transportation from country to country or from place to place within a country. Pimping and procuring are illegal and so is the act of prostitution itself if the prostitute or the location is not licenced by the relevant government body. West Germany is a regulationist country, and so are the states of Nevada and Alaska in the United States.

With **toleration** or abolition, the buying and selling of sexual services by an individual is not illegal nor is it licenced or regulated. Other acts surrounding this exchange are illegal, however, including pimping, procuring, keeping bawdy houses, or even overtly soliciting another person for acts of prostitution. Thus it is not prostitution which is abolished in this system but prostitution as a **criminal act**. While the term "toleration" may to some mistakenly imply approval of prostitution, it is accurate in indicating that prostitution is allowed (if not welcomed). In fact, in an abolitionist setting many obstacles are set up to prevent prostitution from being carried out with any ease for any of the participants. Canada is an abolitionist country as are the United Kingdom, France and Sweden.

It may be useful to Canadians who want change in whatever direction in our own treatment of prostitution to have a better sense of what other countries do about this complex issue. This chapter will briefly describe the legal and social approaches to prostitution in a number of countries and states of the United States.

It is difficult to find adequate data for any country on the laws relating to prostitution, their effect on the people involved, and their effectiveness in terms of that society's goals. Few countries have systematically evaluated the effectiveness of their prostitution-related laws. A city may know its own situation very well and a neighbouring city not at all. The same is true of states and countries. A number of resources have been

drawn upon for the material presented here including police reports, arrest statistics, newspaper accounts and published research reports ranging from those by prostitutes themselves to reports published by the United Nations Economic and Social Council. (See bibliography for complete listings.)

I. Prohibition

In the United States, responsibility for legislation related to prostitution rests with the individual states rather than the federal government. Obviously, the potential for variation in the laws is considerable. Thirty-eight states outlaw acts of prostitution, 44 prohibit soliciting for the purpose of prostitution, and six states have status offences where a person identified as a prostitute may be charged under vagrancy laws. (Some states have a combination of these types of laws.) The offences may be criminal or civil, with corresponding differences in the sanctions (fines, jail terms, etc.) imposed.

Prostitutes and, at least in terms of the law, customers and pimps are equally liable to punishment. This is not reflected in the arrest rates, however. The prohibitionist system as practiced in the United States consistently punishes the prostitute while virtually ignoring the men who derive pleasure and profit from prostitution. For example, it is extremely rare for a customer to spend time in jail, although a considerable number of arrested and convicted prostitutes must do so. Statistics from arrest records in San Francisco and New York City reflect this practice. In San Francisco in 1977, 2,938 persons were arrested for prostitution and 325 persons were arrested as customers of prostitutes.

Pimp arrests are also negligible even though pimping is clearly prohibited. In an American study of prostitution it was estimated by a Minneapolis policeman that 300 to 400 women a year were taken from Minneapolis to New York City by pimps. He had specific knowledge of at least 200 pimps operating between Minneapolis and New York City. Nevertheless, from January 1974 through the first three quarters of 1977, there were only 36 indictments in New York City for promotion of prostitution (97 in the entire state) and six convictions (18 in the entire state).¹

Along with these problems of undue enforcement, there are very real problems associated with more energetic modes of enforcement. In order to arrest prostitutes in many places in the United States, police respond to complaints from persons in a neighbourhood or business district who believe that their area is being taken over by prostitutes. According to Winick and Kinsie, "on the basis of a study of representative cities, it would appear that only 11 percent of these complaints about prostitution to the police are verifiable."² Furthermore, in the absence of citizen complainants, police often use what the researchers referred to as "clandestine methods bordering on entrapment." Police assigned to this work may "leap out of cars, grab women off the street, arrest them and testify in court as to a criminal solicitation that never took place."³ Although police are disallowed from implanting a criminal design in the mind of a person not otherwise contemplating a crime, police do approach women and ask them for sex, and persist until a deal is negotiated.⁴ Using these methods of arrest or even resorting to perjury to "clean up the streets" can seriously undermine the professional standing and integrity of police officers.

It is obvious from American data that the prohibitionist approach does not drastically reduce the numbers of people who engage in prostitution. Estimates of the number of full-time prostitutes in the United States range between 250,000 and 500,000.⁵ If one includes part-time prostitutes, the estimate rises to approximately 1,300,000 or about one percent of the female population.⁶ One must add to this figure the estimated number of juveniles engaged in prostitution – 600,000 females and 300,000 males. According to the United States Department of Health, Education and Welfare, these figures represent a 242 percent increase in female juvenile prostitution and a 195 percent increase in male juvenile prostitution between 1967 and 1976. During this time the overall increase for adolescent involvement in prostitution was 230 percent.⁷

More than 85,000 people were arrested on prostitution charges in 1977, of whom 71 percent were women. Eighty-five to 90 percent of those detained were street prostitutes even though only ten to 15 percent of known prostitutes are street walkers.⁸

When extra pressure is exerted against street prostitutes in American cities as elsewhere in the world, prostitution goes underground. Massage parlours show up the ambiguity of laws and enforcement policies in a prohibitionist setting. For example, in San Francisco there is a large massage parlour industry, focussed around major convention centres. The

women who work in the massage parlours are licenced by the police department, not the health department, an indication that their real function is known and tolerated. In June 1980, 29 people were arrested in a series of raids on 14 San Francisco massage parlours. Those arrested were charged with "working as a masseuse without a permit," "failure to display permits properly," etc. The licencing requirements for massage parlours thus give police a broader range of charges to use in controlling prostitution.⁹

To combat the blossoming of massage parlours and other types of contemporary brothels, many city governments have enacted zoning regulations which attempt to contain "adult" businesses to one geographic area. One such attempt was made in Boston, but the "Combat Zone" as it is called has become a spawning ground for serious crime. Creation of the zone has been interpreted as a quasi-legal blessing on illegal activities. The intent was to contain and confine prostitution, pornography and similar activities to make law enforcement easier. But its establishment has instead created a nightmare for law enforcement.¹⁰

Prohibition not only makes prostitution difficult to combat, it puts an enormous burden on the legal process. In 1977 the City and County of San Francisco spent approximately \$2 million enforcing prostitution laws. Almost all the money went to arresting, jailing and prosecuting prostitutes.¹¹

A Canadian study estimated the cost of each prostitution-related arrest at more than \$200 and the cost of taking each case through the criminal justice system at more than \$1000. In 1977, an American study estimated that it cost New York taxpayers \$3,000 to arrest and keep one prostitute in jail for two weeks.¹²

If the American prohibitionist approach has failed to eradicate or even check the spread of prostitution, Japan's prohibition system has fared no better. A type of "legislation" of prostitution was in effect in Japan from 1612 to 1958. Women who worked in brothels had to be registered. In 1948, the brothels were closed and prostitution prohibited on the insistence of the occupying forces after World War II. Special "restaurants" known as "tokuin" sprang up to replace the old brothels and operated with apparent toleration until 1958.¹³

Prostitution still exists in Japan. However, an article from **The Economist**, reproduced in **The Globe and Mail** in October 1977 notes that 37,000 nightclub hostesses were then working in Tokyo, and about about 2,200 geishas were still working in the teahouses of that city.¹⁴

It cannot be assumed that all women in these occupations are actually engaged in prostitution, however. The article in **The Economist** noted that "The Japanese draw a fine line between paying a set price for sex and the more subtle art of having a geisha agree to make love for a general promise of money or presents."¹⁵ But the recession has had its effect: "Patrons do admit that more geishas now need to make money from sex because they are making less from their talents for art and conversation." As another by-product of the recession, the number of geishas has decreased to one-tenth of what it was in the late 1960's. Hostesses do not have to undergo the same training as a geisha, or buy the expensive traditional kimono, in order to make about the same income.

It is evident, then, that prostitution is driven underground in countries with prohibitionist systems. A number of reports reveal another reaction to prohibition: widespread growth in what is called "sexual tourism" where groups of men book tours outside their own country. Organized access to prostitutes (increasingly adolescents and children) is a major component of the trips. A number of the agencies of the United Nations have begun to deal with this alarming phenomenon. So have several international church groups and women's groups, and there has been a movement in the international travel agency community to resist the lure of this lucrative form of tourism.⁶

II. Regulation

Regulation of prostitution rather than prohibition does have certain ameliorating qualities for the prostitute and the customer. Women who engage in prostitution in permitted circumstances do not have to fear prosecution. The customers of these women are not participants in an illegal act and so they need not fear arrest for the sexual act *per se* (although they are rarely subject to actual arrest or conviction even in prohibitionist countries). In a regulationist country or state the activities that are illegal include pimping, procuring or otherwise profiting directly from the illegal prostitution of others. Legal prostitution is prostitution that takes place in licenced locations (usually brothels)

with prostitutes who are registered to do this and who can be monitored medically and (not uncommonly) socially. South Korea, West Germany, Amsterdam in the Netherlands, and Nevada and Alaska in the United States have adopted a regulationist system.

In the regulated (or legalized) situation, the conditions under which the women operate in brothels are so restrictive that the advantages of relative safety and a steady source of income might seem to be of limited value compared to the relative freedom of the streets. Descriptions of a brothel in Nevada called the Mustang Ranch reveal that women work 14 hour shifts, seven days a week, three weeks in a row. They can leave the brothel only with permission and often are allowed to go to only a few places in the town (hairdressers, etc.). In many of the brothels in Nevada, as they wait in the "parlour" to be selected by a customer, the women may not read, eat or otherwise while away the slow times. They are not allowed to talk to anyone about their private lives and they can't enter each other's rooms unless it is part of the sexual activity with a customer.

According to geographer Richard Symanski, author of **The Immoral Landscape: Female Prostitution in Western Societies**, there are approximately 35 legal brothels in Nevada. Most of the houses employ about six or seven women, some have as few as three. State law does not allow brothels in counties with a population over 200,000 at the last census. A number of counties with a smaller population have banned brothels in any case. Those counties that do allow certain forms of prostitution regulate it in various ways. Some licence brothels by ordinance. Other counties licence their houses as bars and boarding houses but regulate them under prostitution ordinances. Several counties limit the location of houses; some allow them only in towns or unincorporated areas but do not permit them elsewhere.¹⁸

In spite of these regulatory practices, illicit (unlicensed) forms of prostitution have not been curtailed, nor it seems have related illegal activities been reduced. According to Symanski, 3,000 to 4,000 women work as prostitutes in areas of Nevada where prostitution is illegal. There are as many as 3,000 to 4,000 prostitutes working in the streets and hotels of the gambling towns, and they have the usual dependent relationships with pimps, cabbies, bartenders, owners or managers of certain hotels or motels, etc., all of whom either participate in or exploit the activities of the prostitute.

The regulation of prostitution in Nevada has not cut down the crime associated with prostitution, nor has it served to protect "good" women from sexual assault. Pimps are as prevalent as in prohibitive systems and according to the police in Reno, the closest city to the Mustang Ranch, rape continues to increase as it does everywhere else.¹⁹

Compulsory medical examination of prostitutes, yet another regulationist strategy in Nevada, has also proved to have limited value in controlling venereal disease. In the first place, a strategy which examines only one of the partners in the sex act is bound to be self-defeating. Second, such examinations may actually be harmful, because spuriously favourable results provide a false sense of security to clients, prostitutes and controllers. They also provoke hostility and consequently decrease cooperation from the prostitutes.²⁰ Finally, the effect of commercialized prostitution on venereal disease is negligible. Public health officials in the United States report that prostitutes account for only a small proportion (approximately five percent) of venereal disease cases. Furthermore, those age groups in which the venereal disease rate is highest are those in which patronage of prostitutes is lowest.²¹

Prostitution is also legal throughout West Germany, although the strategies used to regulate it are quite different from those just described. They include registration (rather than licencing) of prostitutes; extensive use of local zoning ordinances; and development of Eros Centres (as opposed to legalized brothels). Eros Centres are large apartment buildings designed for occupation exclusively by prostitutes.

In her study of the effects of legalization on social aspects of prostitution in West Germany, Barbara Yandorf observed that neither prostitutes nor prostitution establishments are specially licenced, registered or certified as such in West Germany. Nonetheless, registration with local health departments is mandatory for prostitutes. They are required to carry special health cards and have regular inspections and they must be at least 18 years old. The cost of regular checkups is covered by the state and prostitutes with a positive venereal disease test are referred to a private doctor for treatment. Their health cards are confiscated by the health authorities during treatments.²² In most cities prostitutes are restricted to certain sections of the city and are allowed to work on the streets, that is to be visible, only between 8 p.m. and 6 a.m.

Since prostitution in Germany may not be banned in cities with a population of more than 20,000 and since each city may regulate the practice as it wishes, a number of different zoning approaches have been tried. In Munich, decentralized zoning allows street prostitution in small "strips" in several areas of the city. Health authorities reportedly prefer such a system since it makes it easier to find, check and register prostitutes than would be the case if streetwalkers were randomly dispersed throughout the city. Berlin has no zoning although prostitution tends to locate where there is other "adult entertainment." Although prostitutes are more difficult to find and register without specific zoning ordinances, less police time is spent ensuring that prostitutes stay in the appointed zone. Hamburg limits prostitution to the St. Pauli district which has been specifically zoned as an "adult entertainment" district. It is about half a square kilometre in size and is clearly apart from the city's business, residential and legitimate entertainment districts.^{23,24}

A unique feature of the West German system is the creation of the Eros Centres, large apartment buildings designed for and occupied solely by prostitutes. Since brothels *per se* are forbidden, "managers" or "madams" of these centres cannot receive a portion of a prostitute's earnings. Owners of the premises out of which prostitutes work can only charge rental fees for the use of the facilities. However, the rents are usually higher than for premises used as ordinary living quarters.

"F," one of the women whose story is featured in **Prostitutes – Our Life**, worked for a while in an Eros Centre. Her criticisms follow:²⁵

They try and make out that those Eros Centres are wonderful
Only Eros Centres aren't like that, they're a catastrophe

There are always about four or five girls on each landing, and the girls stand just outside their doors, inside the building. The clients come up and look around. So when people talk about looking at us as though we were animals, well there they do Because in Eros Centres you work in a bra and panties – at least you can wear a bra, thank goodness Eros Centres don't take girls who want to work in any other way. Girls who want to wear clothes, who want to wear more than little panties and a bra, can't work there. It's the boss who hires and fires the girls, so he makes the rules . . .

You pay him for the room every day. It doesn't matter if you're sick, if you're there or not

There's no way you can actually refuse a client. The girls are forced to work, just to pay for the place they're working in In Eros Centres, it's 30 marks a trick You need four tricks just to pay for the room (The state taxes) the brothel keepers and they tax the girls, whose earnings are supervised very precisely by the Eros Centres.

The establishment of Eros Centres, zoning ordinances and registration practices in West Germany have not succeeded in limiting prostitution or containing prostitutes.²⁶ The majority of them, whether registered or not, work in apartment houses, bath houses, massage parlours and automobiles.²⁷

Legalization of prostitution in West Germany has not affected the prevalence of pimps either. Yandorf estimated that between 80 and 95 percent of prostitutes have pimps.²⁸ According to *Die Arche*, a prostitute refuge in Hamburg, women cannot get into Eros Centres without a pimp.²⁹

Overall, regulatory strategies such as those adopted in Nevada and West Germany are ineffective. They tend to isolate the prostitute from any normal lifestyle by regulating only the prostitute's behaviour and not that of the customer or pimp. Thus these regulations fail to eliminate or even reduce the worst aspects of prostitution.

III. Toleration (abolition of prostitution as a criminal offence)

The system that neither licences nor criminalizes the act of prostitution but makes related activities like soliciting, pimping and procuring illegal, operates in Canada, the United Kingdom, France, Italy, Sweden, Denmark and Australia. Since under this system prostitutes are no longer criminals simply by virtue of their work or stigmatized through licencing, it was felt that they would more fully enjoy the rights of citizenship. It was also felt that the community would have more success in prosecuting pimps. This has not been the case.

Although the act and status of prostitution are legal in Canada, there is often contradictory public reaction to some of the criminal statutes and police enforcement practices directed at prostitution. The laws about public soliciting and the police

enforcement of these laws is one such area. We have already examined the effectiveness of these strategies and their uneven application in chapter 1.

The laws in England and France against procuring and pimping, living off the avails of prostitution, and keeping a brothel are similar to those in Canada. Prohibitions against soliciting and loitering for the purpose of prostitution, however, apply only to "common prostitutes" in England and to "known prostitutes" in France. A common prostitute is, according to precedent, "a woman who offers her body commonly for acts of lewdness for payment."³⁰ The definition of a "known prostitute" is different from "common prostitute" only in that it can apply to male prostitutes as well. These are, in effect, status offences where the **person** is prosecuted for what she **is** along with what she does. This can create serious problems for the accused or convicted prostitute. As members of the English Collective of Prostitutes pointed out:³¹

By stigmatizing us as 'common prostitutes' in Britain, or as 'Miss Turkey' in Korea, or as a 'known prostitute' in France and elsewhere, they make it very difficult to get off the game. And they make it impossible to have a normal life. Whether we hate ourselves or are openly proud of being whores, there always comes a moment when we feel the stigma of the law . . . the law marks us.

Attempts to abolish the criminal status of acts of prostitution **per se** while outlawing associated acts and circumstances seems fraught with contradictions. In response to the laws in England, one prostitute summarized the complicated situation from her perspective:³²

It's not illegal for a woman to accept money for sexual services. And it's certainly not illegal to purchase them. But it is illegal to do any of the things logically necessary for the conduct of the business advertising, renting premises, bargaining with customers. The laws against immoral earnings mean that if a prostitute supports an out-of-work lover or husband, he is subject to prosecution as a pimp. The laws against keeping a brothel mean that the safety and company available to prostitutes working in shared premises is illegal. The laws against street offences mean that any public encounter between prostitute and potential client – and therefore the chance to conduct business without the pimps, club owners, agencies and other expensive middlemen . . . is impossible.

IV. Conclusions

Systems of prohibition, regulation and toleration (abolition) must be evaluated in terms of their goals. The most sweeping in its goal is prohibition, where all aspects of prostitution are illegal. What is evident here is that prostitution is not reduced in amount or kind, the prostitute is exposed to the hazards of an outlaw existence, the customer is at risk for being part of an illegal transaction in an illegal setting, and the laws and enforcement practices of the prohibitionist system are mocked. In a society that repudiates prostitution and all its related activities, the prohibitionist approach reinforces that attitude but does not succeed in eradicating prostitution in practice.

The stand against prostitution and prostitutes themselves is not as strong in the regulationist situation. A place is made for the practice of prostitution but only under very limited conditions. The life of the local prostitute and her customer may be made a little less hazardous, legally or physically, but all evidence indicates that the conditions of work are still notably destructive for the woman. They allow or encourage the customer to continue to engage in highly depersonalized sexual experiences often at the woman's psychological and physical expense. Pimping and other forms of "living off the prostitute" continue, though in modified forms. There is a very strong suggestion that in the legal situation, the government takes the parasitic roles which otherwise would be carried out by entrepreneurs. In any case, few prostitutes, customers or other participants in the regulationist system actually place themselves within the fold of legality. Those outside the law carry out all the activities of prostitution in the same way they do everywhere else.

In some ways, the abolitionist system is the most baffling. It seems to be the most humane system, leaving the choice of engaging in acts of prostitution to the individual prostitute and customer as long as no member of the public is disturbed by this and as long as no one else profits from the exchange. This is not how it works out, unfortunately. There is first of all the issue of choice. Can a person of minimal education and financial well-being be said truly to choose a way of life that is stigmatized by much of society, that is physically dangerous at times, that leaves her with little control over her earning power, and that can cause her considerable legal complications?

Second, the element of disturbance is not a simple one. Evidently, physical disturbance of citizens, whether passersby or residents, cannot be totally controlled. There is also the element of moral disturbance. For a variety of reasons, some people are disturbed by the very existence of prostitution. For some it may be a matter of moral repugnance or rejection of either the prostitute or the customer. (In a society which operates on a double standard of sexuality, the prostitute is much more likely to be reviled than the customer.) Others react against prostitution in the belief that it is a drastic misuse of human sexuality, in particular the sexuality of women and children. There are many gradations of opinion in between.

So even in the abolitionist system where people are given credit for being able to make free choices, true choice remains problematic. Impersonal, highly unequal sexual exchanges continue, people live off the sexuality of others, and prostitution goes on.

Where can we go from here?

CHAPTER 6

LEGISLATIVE AND SOCIAL REFORM

Before a response can be made to the complex issue of prostitution, each element of that response must be recognized and articulated. First we must examine our **assumptions and attitudes** about prostitution – the act itself, the direct participants (prostitutes and customers), the indirect participants (pimps, owners or managers of enterprises that facilitate prostitution), the legal context (including both the laws and those who enforce them), and the social context (including the problems of residents).

Next, what is the **goal** of the response. What does society or any segment of it want to do about the issue? How does society wish each participant in the phenomenon of prostitution to be treated or to act? A society's laws reflect its values. What rights and freedoms do we want our citizens to have? Whose rights will be preserved, and at whose cost?

Further, we must be aware of the possible **consequences** of any action for each participant. What may be an effective way to reduce the problems caused by one activity (or for one type of participant) might encourage other activities in an unacceptable way.

I. Legislative Reform

Chapters 1 and 2 described the legal strategies undertaken in Canada, past and present, to deal with prostitution. Until recently the law reflected a double standard of morality. The uneven enforcement of the law aimed at prostitution emphasized the condemnation of women's acts and the toleration of men's, whether they were customers, pimps, procurers or bawdy house owners. Only the woman prostitute was locked into the revolving door of arrest, fines and being driven to prostitute herself again only to be arrested again. The consequences of these laws for other participants were negligible. The consequence for society was that the activities of one small segment of the enterprise of prostitution was now and then curtailed while prostitution itself continued unabated.

In recent years Canada has broadened this view slightly. Customers of prostitution can, in the letter of the law, be punished for seeking out someone for acts of prostitution. This

law is variously interpreted from province to province, however. Also, there is no longer in law the status offence of being a prostitute. Certain prostitution-related acts like soliciting have to take place for a woman to be charged.

Legislation continues to aim at minimizing **public evidence** of prostitution, and where it is evident to enforce the laws largely against the woman. The consequence is that the public evidence is not much diminished; the women are punished; the customer, pimp, and associate supporters of prostitution are largely untouched by law; and the police are left with unclear guidelines upon which to act.

It might seem that, since most adult prostitutes are women, the immediate goal of concerned women would be to eradicate prostitution, on the assumption that it is harmful to women who engage in it and harmful to other women who live in a society where women's sexual services are bought and sold like a commodity. For the women who engage in prostitution, however, it is their livelihood and their way of life. Although most aspects of prostitution are surrounded by controversy and unresolved questions, one thing is clear: prostitutes themselves strongly reject any action that would take their source of income away from them. It is particularly galling when this action is proposed by those who would do it for the prostitute's "own good." This study should not be seen in that light.

Further, women who are concerned about the social, economic and physical vulnerability of women engaged in prostitution are aware that there are other women in society who feel that their own way of life is disrupted, or their social values affronted, by activities associated with prostitution. The position of these women must also be considered.

Women have long been at the forefront of struggles to make social relationships more equitable, to improve educational and cultural levels for all citizens, to improve working conditions, and to make laws and their enforcement more humane. If prostitution is a reflection of society with unequal and highly impersonal relations between the sexes, some things in that society must be changed, but as women we cannot do this at the direct expense of women who now depend on prostitution for their income.

What emerges from this study is that the enterprise of prostitution reflects a sexist society, one which encourages unequal, impersonal, commercialized sexual relations

between women and men. Of all those who profit from prostitution, the prostitute herself still bears the brunt of social stigma, legal complications, risk of physical abuse or sexually transmitted diseases, and expropriation of much of her income by others.

The long-term goal of dealing with prostitution should be to eliminate unequal, depersonalized, commoditized sexual relations and the social and economic inequities that put women in more vulnerable roles in prostitution and many other socio-economic circumstances. The strategies for accomplishing this should include broadening women's access to the full range of educational, economic and social roles within society. Men and women should be able to work and socialize together as equals with the opportunity to learn about each other as whole people. But what can be done in the face of current realities?

The Advisory Council on the Status of Women has three closely related concerns, all of which take into account the Council's efforts to contribute toward more humane treatment of all women in our society. One is that women who work as prostitutes may do so with a minimum risk of physical abuse from customers or pimps, of unfair treatment in law and its enforcement, and of financial exploitation by pimps or other "entrepreneurs." At the same time, other citizens should not be harassed or intimidated by prostitution-related activities. To deal with these concerns, existing laws must be changed and applied vigorously and even-handedly. Finally, the Council suggests the development of social policies which would decrease the demand for asymmetrical, commoditized sex, and make it easier for prostitute women who wish to take up other forms of work to do so.

The following section is an attempt to suggest strategies for legal and social reform within the basic context of enhancing the well-being and status of all women.

II. Legal Reforms and Monitoring of Their Application

Within this context then, it seems reasonable to make changes in particular laws which, in the short term, would allow prostitutes to carry out their activities in physical safety. Such changes should attempt to minimize prostitutes' coercion and exploitation by pimps

and illegal entrepreneurs, and allow their activities to be carried out without causing public disturbance.

With these considerations in mind, the Council recommends the following changes in the **Criminal Code**. They amount to partial decriminalization of selected prostitution-related offences, while retaining sanctions against all offensive solicitors and against all who directly profit from the prostitution of others.

- 1) The abolition of the present "soliciting" provision in S. 195.1 of the **Criminal Code** should be replaced by the creation of a new offence wherein the pressing or persistent solicitations of anyone in a public place, for whatever purpose, would be liable to penalty;
- 2) A broad definition of public place which would include:
 - (a) a motor vehicle located in or on a public place;
 - (b) a place which can be seen from a public place;

These recommendations, applicable to potential customers as well as prostitutes, recognize that the public nuisance of pressing or persistent solicitation is great enough to be a matter for genuine concern. Rather than single out soliciting for the purpose of prostitution for special mention, however, as in S. 195.1, the recommendations are an attempt to use the criminal law to reduce all forms of pressing or persistent solicitation. This does not mean that unobtrusive, inoffensive soliciting of the sort with which we are familiar at Christmastime from social welfare groups or from pamphleteers who stand quietly on the sidewalk simply holding their brochures up for public view will be liable to criminal sanctions. They are neither pressing nor persistent in accosting any individual.

The following recommendations aim at allowing prostitutes to carry on their business discreetly and in small groups for their own safety. They also attempt to strengthen sanctions against pimps and procurers.

- 3) The definition of a common bawdy house in S. 179 of the **Criminal Code** should be amended to make it clear that it refers only to places used for the purpose of the prostitution of others and to places used by more than three persons for the purpose of their own prostitution;

- 4) The criminal offence of procuring in S. 195 of the **Criminal Code** should be amended to ensure that all persons who may be subject to procurement are protected. That is, anyone who procures anyone, no matter the status of the procured person, commits an offence;
- 5) An amended procuring provision in S. 195 of the **Criminal Code** should be vigorously enforced;

These recommendations recognize the fact that prostitution is far too entrenched in our society to be eradicated in the near future. Meanwhile there are a number of women who, for whatever reasons, are dependent upon prostitution for their livelihood. If they are adult women it seems only fair that they be able to continue in prostitution, should they so wish, as long as they can do so in a reasonably safe way, for their own purposes (and not to the advantage of pimps, procurers or organized crime) and without intruding upon the public.

The changes would also permit adult prostitutes and customers to operate freely in places which do not contravene the revised definition of a common bawdy house. This may also reduce some of the street activity now associated with prostitution. It would give prostitutes the added protection of being able to work in twos or threes and to set up a fairly stable, safe place from which to operate.

If this kind of arrangement is to work the prostitute must still be able to make her presence known. If she is not to resort to overt street solicitation or reliance upon pimps and other contact people, with their exploitative relationships to her, she must be able to advertise. Guidelines for advertisement could be developed with the public nuisance factor kept in mind – that they not be offensive because of their location, size, content or general obtrusiveness. The question of whether guidelines would acquire legal status and at what jurisdictional level, or whether they could be controlled by individual newspapers or other media as is sometimes the case for certain classified advertisements would have to be resolved.

Changes in the laws related to pimps and procuring, along with the retention of the bawdy house provisions in S. 193 under the **new** definition (more than three prostitutes) would allow the law to continue to penalize everyone attempting to profit from the organization

of prostitutes into brothel operations. Amendments which would facilitate the use of the procuring section against those who exploit prostitutes should be encouraged. Eliminating the special requirement of corroboration of a witness' testimony concerning those accused of procuring might be a step in this direction.

- 6) An additional new criminal offence of "offering to purchase or purchasing sexual services of a person under the age of 18 years" should be created. Mistake of fact concerning the age of the individual should be no defence to this charge;

This recommendation indicates the total rejection by the Canadian Advisory Council on the Status of Women of any exploitation of minors for sexual purposes. Here the culpability must be with the person who encourages this behaviour, not upon the minor. Of course, unless extensive change can be brought about in the emotional and economic situation of many adolescents there will continue to be some who are drawn into prostitution. Their problems will not be solved by changes in the **Criminal Code**, but the seriousness of adult exploitation of minors is more appropriately dealt with there.

Of course, it is essential that the enforcement of any of these laws be efficient, equitable and non-sexist, particularly where soliciting is at issue. Our research has shown that this has rarely been the case in the past. Although the Canadian Advisory Council on the Status of Women has suggested alternatives to the existing legal approach to prostitution-related offences, it must be recognized that no one can determine at this point whether they – or any other laws – will succeed, given the complexity of the problem. Therefore, any laws declared in the near future must be based on research as to their application and efficacy.

- 7) In connection with the specific alternatives presented above, the Canadian Advisory Council on the Status of Women also recommends that its policy of partial decriminalization be implemented for a period of several years during which its effect would be monitored and assessed. At the expiration of this period its usefulness should be evaluated with specific reference to the following criteria, among others:

- (a) its success in alleviating the burden of legal and economic penalties which are now borne almost entirely by the women who are prostitutes;

- (b) its enforcement in an equitable, undiscriminatory manner;
- (c) its efficacy as a system which discourages the participation of pimps and organized crime in activities carried out by individual prostitutes;
- (d) its success in minimizing nuisance behaviour in streets and neighbourhoods.

Unless thorough research goes hand-in-hand with informed lawmaking, there is a real danger of further complicating an already discouraging situation.

III. Social Reforms

Our laws and the enforcement of them are shaped within the larger context of our economic, political and social institutions. Laws may "lead" society in the formation of attitudes or "follow" the lead of social pressures.

It would be a mistake to expect that legal reform **alone** can change, increase or eradicate any social phenomenon, however. In the case of prostitution, real change can only come about if there are extensive changes in a wide range of institutions, attitudes and behaviours. Women's economic and social vulnerability must be lessened if women are to be able to improve and control the circumstances of their lives – the kinds of work they do, the income they earn when they work for pay, the quality of their social relationships, and their physical safety and well-being. Women as a group are fully accepted in only a very few types of work, work that is predominantly low skilled, low paying and low status. It is women who are the objects of most marital violence, and women and girls who are the victims of rape and other sexual abuse.

Women have traditionally had their sexual morality and physical attractiveness defined by men, who have benefitted from the requirements they set for female sexual accessibility and marital fidelity. Women have had to conform to these expectations to maintain "respectability" as women and to achieve some measure of economic security through marriage.

While this situation may be changing slowly, it is not difficult to see that prostitution will continue to be an option for some women as long as alternative means of economic support are difficult to obtain or are unappealing to a woman who does not want to engage in the kinds of work into which most women are channelled. There will be money in prostitution as long as it is considered acceptable and desirable by enough men to make it worthwhile for some women, girls, boys or men to accept the risks and precarious social status it incurs.

Two levels of social reform should be considered. The first is to develop measures to help women who are prostitutes today to adopt a different way of life if they wish to. The second would be much broader. It would aim at changing those aspects of society that create rigid stereotypical expectations of female and male behaviour and reinforce the economic and social inequities between women and men, of which prostitution is only an extreme example.

For women who are themselves prostitutes, it can be very difficult to adopt the very different way of life and everyday routine of paid work in the labour force. The prostitute who can generally set her own hours of work and who lives in a world of cash exchanges, whose money may come as easily and quickly as it goes, and who is not linked firmly to the "disciplines" of work in a bureaucratic setting, is likely to find it very difficult to make the transition to that new world. A woman who has spent a significant portion of her early adult life in a marginal or even "outlaw" occupation is unlikely to have the skills and knowledge required for most standard jobs. Nor is she likely to have contacts to help her find a job in the regular working world. Aside from these difficulties, there is the distinct possibility that jobs in the "straight" world will be unappealing and low paying. An ex-prostitute is faced with the fact that the jobs which she can get, like the jobs most women hold, are neither as interesting nor as well-paid as the jobs any man, even if equally marginal, is able to get.

Any woman who is isolated from the mainstream or who is not attached to the labour force needs access to programs that inform her about the prerequisites for entering the paid work force. She needs to know what jobs exist, what training they require, how to engage in job searches, make out applications and have job interviews. She will need to know more general aspects of paid work – how to behave on the job, how to relate to other workers, how to try for advancement if she wishes it.

A number of existing programs throughout the country offer information and training on one, more, or all of these aspects of the paid work world, and could be used or adapted to help prostitute women who wish to do so to move from their marginal social and economic status into the mainstream of society. Some community colleges, community organizations and women's groups offer these programs, as do certain provincial and federal government offices. The programs are often underfunded, however, with the result that many of them are not offered uniformly across the country. A lot depends on local initiative: one city or town may have a good range of programs while another has none.

While prostitute women have the same need for skills training, job entry and on-the-job support that other women do, any program that is expected to help the prostitute in transition must devote special attention to reaching and making welcome and comfortable women who have been living a rather different way from other clientele. Involving the women themselves in planning and carrying out the program would solve some of these problems. Provision for them to form support groups where they can discuss and analyze their experiences in this time of change could be an important aid to the other aspects of any program. The essential point in the case of prostitutes is that the program build on their previous experiences by establishing ways for them to constructively link the relevant parts of their previous life to their new one.

At the more general level of social reform, extensive action would have to be taken on two fronts – economic and social. Assuming that they have the appropriate qualifications, all women should be able to choose freely the kind of work they undertake, without sexual barriers. This would require a major restructuring of the work world and the educational system which feeds people into it. Outmoded ideas about women's social and economic roles must be eradicated by the "push" of affirmative action programs and the "pull" of educational programs both on the job and off.

Second, attitudes about women's and men's role in society, their needs and their rights, must be dramatically changed. The double standard of sexual morality, the belief that women's work is not real because much of it is not paid, the attitudes toward women which result in physical and sexual assault, the belief that women are still the "property" of their husbands or sexual partners, all of these must be changed if women are to participate fully in our society.

Some of this change could be effected by education. Education should include thorough, non-sexist study of human sexuality and socio-sexual relations so that an accurate picture of the needs, interests and rights of all people can be more clearly understood and respected. Derogatory stereotypes about women as a group must be countered in the workplace and in the community by thorough education about women's full human capacities and rights.

Attempts must be made in every aspect of our lives to bring about a true egalitarian society, one that allows all women and men to have true freedom of choice in their personal, economic and social lives.

NOTES

CHAPTER ONE

1. Statutes passed in Nova Scotia, Upper Canada, and New Brunswick authorized the detention of "disorderly persons, vagabonds, and persons of lewd behaviour," and prohibited the keeping of common bawdy houses. See 33 Geo. 11 (1759), c. 1 (Nova Scotia); 40 Geo. III (1800), c. 1 (Upper Canada); 7 Wm. IV (1837), c. 24 (Upper Canada); 9 & 10 Geo. IV (1829), c. 8 (New Brunswick); 3 Vict. (1840), c. 44 (New Brunswick); 12 Vict. (1849), c. 29 (New Brunswick); and R.S.N.S. (1851), c. 158.
2. 2 Vict. (1) (1839), c. 2 (Lower Canada), reprinted in Revised Acts and Ordinances of Lower Canada 1845, class B, p. 163.
3. 22 Vict. (1858), c. 27 (Province of Canada). See also Consolidated Statutes of Canada 1859, c. 105.
4. 5 Geo. IV (1824), c. 83 (England); and 2 & 3 Vict. (1839), c. 47 (England). The Canadian "status" provisions were drawn from earlier English statutes which had been repealed. See 3 Geo. IV (1822), c. 40 (England).
5. 29 Vict. (1865), c. 8 (Province of Canada).
6. 27 & 28 Vict. (1864), c. 85 (England).
7. Judith Walkowitz, **Prostitution and Victorian Society: Women, Class and the State** (Cambridge: Cambridge University Press, 1980).
8. **Ibid.** See also Vern L. Bulloch, **The History of Prostitution** (New York: University Books, 1964).
9. E.M. Sigsworth and T.J. Wyke, "A Study of Victorian Prostitution and Venereal Disease" in Martha Vicinus, **Suffer and Be Still: Women in the Victorian Age** (Bloomington: Indiana University Press, 1972), p. 77.
10. **Daily Telegraph**, Toronto, December 28, 1866, p. 3; January 9, 1867, p. 4. **Globe**, Toronto, December 29, 1866, p. 2; May 9, 1867.
11. The **Canada Gazette** did not contain any reports of hospitals certified under the act; without certified hospitals, the act would have been unenforceable.
12. C.S. Clark, **Of Toronto the Good** (Montreal: The Toronto Publishing Co., 1898), pp. 86-87.
13. **Ibid.**, p. 88.
14. Numerous provincial statutes provided enabling authorization for the municipalities to legislate on these matters. See, for example, 14 Vict. (1851), c. 15 (New Brunswick); C.S.U.C. 1859, c. 54 (Upper Canada); 29 & 30 Vict. (1866), c. 51 (Upper Canada); R.S.O. 1877, vol. 2, c. 174 (Ontario); 27 Vict. (1864), c. 81 (Nova Scotia); R.S.N.S. 1864, c. 160 (Nova Scotia); 34 Vict. (1870), c. 68 (Quebec); 45 Vict. (1882),

c. 35 (Quebec); 53 Vict. (1890), c. 72 (Quebec); 38 Vict. (1875), c. 31 (Manitoba); 42 Vict. (1879), c. 3 (Manitoba); 44 Vict. (1881), c. 3 (Manitoba).

Examples of by-laws actually passed under provincial enabling legislation varied. Toronto City Council passed by-law no. 464, entitled "A By-Law to Restrain and Punish Vagrants and other Disorderly Persons" in October 1868. It stated that:

any person or persons who shall be found guilty of keeping or maintaining, or be an inmate or habitual frequenter of, or in any way connected with, or in any way contribute to, the support of any disorderly house, or house of ill-fame, or such other place for the practice of prostitution, or otherwise, of any such house, shall be subject to the penalties of this By-Law.

The Consolidated By-Laws of the City of London (Ontario), 1879, prohibited persons from keeping, frequenting, or contributing to the support of a house of ill-fame, or from voluntarily residing therein. It was forbidden to knowingly let any house to be used as a house of ill-fame, or to permit a house to be frequented by prostitutes. Owners of licenced premises were prohibited from allowing prostitutes to resort to their premises, and owners of licenced cabs, horses and vehicles were prohibited from permitting prostitutes to drive about the streets (see s. 8, 9, 10, 239, 23 and 13).

15. 32 & 33 Vict. (1869), c. 20 (Canada).
16. 32 & 33 Vict. (1869), c. 28 (Canada).
17. 37 Vict. (1874), c. 43 (Canada) and 44 Vict. (1881), c. 31 (Canada).
18. Ruth Rosen, **The Lost Sisterhood: Prostitution in America 1900-1918** (Baltimore: Johns Hopkins University Press, 1982), pp. 120-121.
19. Presentment of the Grand Jury to the Judge of the Court of Oyer and Terminer at the end of the Winter Assize, 1882, York Criminal Assize Book 1878-87, at 269.
20. D.A. Watt, **Moral Legislation: A Statement Prepared for the Information of the Senate** (Montreal: Gazette Printing Co., 1890), p. 38.
21. 49 Vict. (1886), c. 157 (Canada), R.S.C. 1886, c. 157.
22. 55 & 56 Vict. (1892), c. 29 (Canada), s. 185, 186 and 188.
23. For some examples of the types of new offences that were added to the **Criminal Code** in the twentieth century, see 3 & 4 Geo. V (1913), c. 13, which enacted the following provisions:
 - .9 Everyone is guilty of an indictable offence . . . who . . . on the arrival of any woman or girl in Canada, directs . . . her . . . to any common bawdy house . . . ; or for the purposes of gain, exercises control, direction or influence over the movements of any woman or girl in such a manner as to show that he is aiding, abetting or compelling her prostitution with any person or generally . . .

Similarly, 11 Geo. VI (1947), c. 55, s. 4(8) added another new offence: "Everyone who knowingly takes or transports . . . any other person to any common bawdy house is guilty of an offence and liable on summary conviction"

The majority of changes dealt with the penalties attached to these offences. See for example, 8 & 9 Edw. VII (1909), c. 9, s. 2, which increased the penalty for procuring women from a maximum of two years to a maximum of five years; 3 & 4 Geo. V (1913), c. 13, s. 9, which increased this penalty yet again to include whipping on second and subsequent convictions; and 10 & 11 Geo. V (1920), c. 43, s. 18, which increased it once more to a maximum of ten years. 5 Geo. V (1915), c. 12, s. 5 & 6 increased the penalty for being an inmate of a common bawdy house from a maximum six months to a year, and required keepers and inmates of bawdy houses who had been convicted three or more times to serve a minimum term of three months, with a maximum of two years. In 1947 this was again increased, by 11 Geo. VI, c. 55, s. 4, to a maximum of three years.

The most important amendments seen in the twentieth century related to the prostitution activities of men. In 1913, men who lived off the avails of prostitution (pimps) were subjected to a reverse onus clause, which stated: "Where a male person is proved to live with or to be habitually in the company of a prostitute . . . and has no visible means of support, or to live in a house of prostitution, he shall, unless he can satisfy the court to the contrary, be deemed to be living on the earnings of prostitution." (3 & 4 Geo. V (1913), c. 13, s. 9 (Canada))

This was similar to legislation that had been passed in England in 1898. (61 & 62 Vict., c. 39 (England))

In addition, the provisions against persons who were in the habit of frequenting bawdy houses were repealed in 1913, and it was made clear that habitual frequenting was no longer a prerequisite to conviction: "everyone who, without lawful excuse is found in any disorderly house" was now to be subject to conviction. (3 & 4 Geo. V (1913), c. 13, s. 12 (Canada))

24. See Constance B. Backhouse, "Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society," October 1982, unpublished manuscript.
25. (1870), 30 U.C.Q.B.R. 509.
26. *Ibid.*, at 513-514.
27. (1891), 1 C.C.C. 66 (Court of Queen's Bench, Quebec).
28. See also *The Queen v. Rehe* (1897), 1 C.C.C. 63 (Court of Queen's Bench, Quebec).
29. This was altered by 6 & 7 Edw. VII (1907), c. 8, s. 2 (Canada), which changed the definition of common bawdy house to "a house, set of rooms or place of any kind kept for the purpose of prostitution or occupied or resorted to by one or more persons for such purposes."
30. (1898), 29 O.R. 660.
31. *Ibid.*, at 663.

32. In *re Polly Hamilton* (1882), *Coutlee's Supreme Court Cases* 35, at 42-43.
33. Carroll Smith-Rosenberg, "Beauty, the Beast and the Militant Woman: A Case Study in Sex Roles and Social Stress in Jacksonian Democracy," in *A Heritage of Her Own: Towards a New Social History of American Women*, eds. Cott and Pleck (New York: Simon & Shuster, 1979), pp. 197-204.
34. 34 Vict. (1871), c. 30 (Canada).
35. 54 & 55 Vict. (1891), c. 55 (Canada); 58 & 59 Vict. (1895), c. 43 (Canada).
36. See, for example, 42 Vict. (1879), c. 39 (Ontario); 49 Vict. (1886), c. 49 (Ontario); 56 Vict. (1893), c. 45 (Ontario); R.S.N.S. 1884, c. 95 (Nova Scotia); 51 Vict. (1888), c. 40 (Nova Scotia); 54 & 55 Vict. (1891), c. 55 (Canada); 58 & 59 Vict. (1895), c. 43 (Canada); 61 Vict. (1898), c. 6 (Manitoba); 62 & 63 Vict. (1899), c. 4 (Manitoba). This legislation was strengthened by the amendment of the **Criminal Code** in 1918 to create a new federal criminal offence of "corrupting children" through such behaviour as indulging in "sexual immorality" in the home. See 8 & 9 Geo. V (1918), c. 16 s. 1; 23 & 24 Geo. V (1933), c. 53, s. 3; 25 & 26 Geo. V (1935), c. 36, s. 12.
37. James Gray, *Red Lights on the Prairies* (Scarborough, Ontario: New American Library of Canada, 1971), p. 27.
38. *Ibid.*
39. 43 Vict. (1880), c. 28 (Canada).
40. 47 Vict. (1884), c. 27 (Canada).
41. 49 Vict. (1886), c. 43 (Canada).
42. 50 & 51 Vict. (1887), c. 33, s. 11 (Canada).
43. 55 & 56 Vict. (1892), c. 29, s. 190 (Canada).
44. 2 & 3 Eliz. II (1953-54), c. 51. (Canada).
45. Abraham Flexner, *Prostitution in Europe* (New York: Century, 1914), p. 108. The study was sponsored by John D. Rockefeller through the Bureau of Social Hygiene.
46. Walkowitz, *supra*, N. 7, at 128.

CHAPTER TWO

1. (1975), 27 C.C.C. (2d) 485 (Ont. C.A.).
2. *Ibid.*, at 487.
3. (1974), 16 C.C.C. (2d) 545 (B.C.C.A.).
4. (1974), 19 C.C.C. (2d) 27 (B.C.C.A.)

5. (1977), 34 C.C.C. (2d) 417 (Alta. S. Ct. Ap. Div.).
6. *Ibid.*, at 421.
7. *Ibid.*, at 425.
8. (1978), 38 C.C.C. (2d) 418 (S.C.C.).
9. *Ibid.*, at 424.
10. *Loc. cit.*, *supra*, N.3.
11. *Loc. cit.*, *supra*, N.4.
12. *Loc. cit.*, *supra*, N.8.
13. (1980), 54 C.C.C. (2d) 539 (B.C.C.A.).
14. *Ibid.*
15. (1980), 52 C.C.C. (2d) 515 (Alta. Q.B.).
16. (1981), 64 C.C.C. (2d) 1 (S.C.C.).
17. *Ibid.*
18. *Ibid.*, at 6.
19. *Loc. cit.*, *supra*, N. 8.
20. The **Criminal Code**, 1972, C.13, 5.195.1.
21. (1978), 41 C.C.C. (2d) 31 (B.C.C.A.).
22. *Ibid.*, at 32.
23. (1973), 11 C.C.C. (2d) 28 (B.C.S.C.).
24. (1972), 9 C.C.C. (2d) 364 (Ont. Co. Ct.).
25. (1978), 43 C.C.C. (2d) 199 (Ont. C.A.).
26. *Ibid.*
27. *Loc. cit.*, *supra*, N.24.
28. *Loc. cit.*, *supra*, N.21.
29. **Bill C-127**, An Act to amend the **Criminal Code** in Relation to Sexual Offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof.
30. *Ibid.*, S. 11.

31. *Loc. cit.*, *supra*, N.8.
32. *Loc. cit.*, *supra*, N.20.
33. *Loc. cit.*, *supra*, N.8.
34. *Op. cit.*, *supra*, N.8, at 420-421.
35. *Op. cit.*, *supra*, N. 8, at 421-422.
36. *Loc. cit.*, *supra*, N.8.
37. (1982), 67 C.C.C. (2d) 231 (B.C. Co. Ct.).
38. (1981), 50 C.C.C. (2d) 144 (Alta. Q.B.).
39. (1980) 4 W.W.R. 85 (Sask. Prov.Ct.).
40. *Loc. cit.*, *supra*, N.8.
41. *Loc. cit.*, *supra*, N.8.
42. *Loc. cit.*, *supra*, N.16.
43. *Ibid.*
44. (1980), 56 C.C.C.(2d) 99 (Ont. C.A.).
45. (1971), 4 C.C.C. (2d) 396 (Ont. S.C.).
46. Unreported, October 12, 1982, Matlow J., Ont. Co. Ct.
47. Unreported, March 7, 1980, German J., Ont. Co. Ct.
48. *Loc. cit.*, *supra*, N. 45.
49. Unreported, June 8, 1981, Kane J., Ont. Co. Ct.
50. *Op. cit.*, *supra*, N.45, at 5.
51. *Loc. cit.*, *supra*, N.8.
52. (1979), 3 W.C.B. 360 (Ont. Prov. Ct.).
53. See: *Rice v. Connolly*, (1966) 2 E.R. 649.
54. (1970) 1 C.C.C. 313 (B.C.C.A.).
55. (1971), 2 C.C.C. (2d) 315 (B.C.C.A.).
56. *Op. cit.*, *supra*, N.20, at S. 193(3).
57. *Ibid.*, at S. 193(4).

58. *Ibid.*, at S. 193(2)(c).
59. *Ibid.*, at S. 179(1).
60. (1968) 2 C.C.C. 247 (S.C.C.).
61. *Ibid.*, at 250.
62. (1978), 42 C.C.C. (2d) 195 (Ont. C.A.).
63. (1939) S.C.R. 212 (S.C.C.).
64. *Ibid.*, at 213.
65. **Sexual Offences Act**, 1956, (Imp.), 4 & 5, Eliz. 2, C.69.
66. (1964), 48 Cr. Ap. R. 30 (Div. Crt.).
67. (1895) 1 Q.B. 607, at 608.
68. *Op. cit.*, *supra*, N. 65, at 34.
69. *Op. cit.*, *supra*, N.20, at S. 179(1).
70. (1982), 66 C.C.C. (2d) 388 (Ont. C.A.).
71. *Ibid.*, at 393.
72. *Op. cit.*, *supra*, N.20, at S. 179(1).
73. *Loc. cit.*, *supra*, N.69.
74. S. 193(1) to (4) states:
193. (1) "Every one who keeps a common bawdy-house is guilty of an indictable offence and is liable to imprisonment for two years.

(2) Everyone who
 (a) is an inmate of a common bawdy-house,
 (b) is found, without lawful excuse, in a common bawdy-house, or
 (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise
 having charge or control of any place, knowingly permits the place or
 any part thereof to be let or used for the purposes of a common
 bawdy-house,
is guilty of an offence punishable on summary conviction.

(3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served upon the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.

- (4) Where a person upon whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect to the same premises, the person upon whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence. 1953-54, c. 51, s. 182."

75. See: **R. v. Kerim**, (1963) 1 C.C.C. 233 (S.C.C.).
76. **Op. cit.**, *supra*, N. 69, at 395.
77. Renamed the **Constitution Act**, 1867, by the **Constitution Act** 1982, S. 53(1) and Schedule Item 1.
78. **Ibid.**
79. (1981), 68 C.C.C. (2d) 548 (Que. S.C.).
80. (1983) 2.C.C.C. (3d) 330.
81. **Ibid.**, at 333.
82. **Ibid.**, at 338-339.
83. **Ibid.**, at 339.
84. See Appendix B for the full text of these recommendations.
85. See Appendix C for the full text of the Proposed Act to Amend the Criminal Code.
86. R.S.O. 1980, C.511.
87. Entrapment is a very limited defence in Canada. See: **Amato v. The Queen** (1982), 69 C.C.C. (2d) 31 (S.C.C.).
88. (1970), 1 C.C.C. (2d) 5 (B.C.C.A.).
89. (1917), 29 C.C.C. (S.C.C.).
90. **Loc. cit.**, *supra*, N.29.
91. **Young Offenders Act**, 1980-81-82 (Can.) c. 110 coming into force on proclamation.
92. **Juvenile Delinquents Act**, R.S., c.160.
93. See: **R. v. Taylor**, (1980), 55 C.C.C. (2d) 468 (P.E.I. S.C.).
94. **Loc. cit.**, *supra*, N.93.

95. **Ibid.**, at S. 2. **The Young Offenders Act**, defines a "young person" as one who is,
". . .(a) twelve years of age or more, but
(b) under 18 years of age or, in a province in respect of which a proclamation
has been issued under subsection (2) prior to April 1, 1985, under sixteen or
seventeen years, whichever age is specified by the proclamation . . ."
96. See: **R. v. Barrie** (1975), 25 C.C.C. (2d) 216 (Ont. Co. Ct.).
97. (1982), 65 C.C.C. (2d) 214 (Alta. C.A.).
98. (1981), 60 C.C.C. (2d) 1 (Alta. C.A.).
99. **Op. cit.**, *supra*, N. 20, at S. 663(2)(h).
100. (1973), 13 C.C.C (2d) 287 (Ont. C.A.).
101. (1979), 57 C.C.C. (2d) 267 (Que. C.A.).
102. (1981), 64 C.C.C. (2d) 216 (B.C.S.C.).
103. (1980), 6 W.C.B. 47 (B.C.C.A.).
104. (1982), W.C.B. 532 (Sask. C.A.).
105. See, for example, the **Ontario Legal Aid Act**, R.S.O. 1980, C. 234, S. 13.
106. **Divorce Act**, R.S.C. 1967-8, c. 24.
107. For the offences punishable by less than 14 years, where it is in the best interests of
the accused and not contrary to the public interest.
108. **The Immigration Act**, 1976, 25-26 Eliz. 2, Vol. 2, c. 52, S. 19(1)(c) and 19(2)(a).
109. **Ibid.**, at S. 19(2)(a) & (b). There are exceptions in each case where specified periods
of time have elapsed since conviction.
110. See **Immigration Manual**, Is. 20-22.
111. **The Immigration Act**, R.S.C. 1970, c. 325, S. 5(e) did exclude prostitutes as a class,
from entry, and made them subject to deportation. That provision was removed in
1976.
112. **The Income Tax Act**, R.S.C. 1970, C. 148.
113. (1955), 55 D.T.C. 439 (Inc. Tax Ap.Bd.).
114. (1964), 64 D.T.C. 533B (Exch. Ct. Can.).
115. (1971), 71 D.T.C. 516 (Inc. Tax Ap.Bd.).
116. **The Venereal Diseases Prevention Act**, R.S.O. 1980, C. 521, S. 4(2).

CHAPTER THREE

1. Robert Prus and Styllianoss Irini, **Hookers, Rounders and Desk Clerks** (Toronto: Gage Publishing Ltd., 1980). Halifax study: Lois Hoegg, "Prostitution"; working paper prepared for criminology course, Dalhousie University, Faculty of Law, 1982. Monique Layton, **Prostitution in Vancouver (1973-75): Official and Unofficial Reports** (Vancouver: Vancouver Police Commission, 1975).
2. Based on interviews with lawyers and social welfare professionals who work with juvenile prostitutes.
3. Prus and Irini, p. 57.
4. **Ibid.**
5. From an interview.
6. From an interview with a member of the Vancouver Morality Squad and from the minutes of the Standing Committee on Justice and Legal Affairs, No. 84: 1982.
7. Layton, pp. 109-115.
8. Prus and Irini, p. 57.
9. **Ibid.**, p. 58.
10. Layton, p. 108.
11. Prus and Irini, p. 20.
12. **Ibid.**, p. 58.
13. From an interview.
14. Prus and Irini, p. 67.
15. Vivienne La Flèche, **The Gazette**, Montreal, quoted in Glen Allen, "Prostitution Moves to the Suburbs," **The Gazette**, Montreal, July 23, 1983, pp. A-1, A-2.
16. Layton, p. 147.

CHAPTER FOUR

1. Canada, House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, Issue No. 83:9, May 1982.
2. Bureau of Municipal Research (B.M.R.), **Street Prostitution In Our Cities**, 1983:3.

3. Chief Constable W.J. Snowdon of the Victoria Police Department submitted these letters to the Committee when he appeared before it in May 1982. See Issue No. 90.
4. Quotations from informal discussions with members of CROWE.
5. Canada, House of Commons, Issue No. 83:13.
6. Interview with CROWE.
7. Canada, House of Commons, No. 83A:6.
8. B.M.R., 1983:4.
9. B.M.R., 1983:8.
10. Canada, House of Commons, Minutes of Proceedings (etc.) No. 84:10.
11. Interview with Staff Sergeant Terry Roberts, head of the Vancouver Police Department's general vice section, November 26, 1982.
12. Canada, House of Commons, Minutes of Proceedings (etc.) No. 94:98.
13. B.M.R., 1983:8.
14. Personal communication (letter), R.J. Steward, Chief Constable, Vancouver Police Department, August 8, 1983.
15. Telephone conversation with Inspector Leo Storm, Halifax Police Department, February 1983.
16. Actually, since it is more often the customer who makes the first move, it might have been more realistic to expect a higher proportion of customers to be charged.
17. Interview with Alderwomen May Brown and Marguerite Ford, City of Vancouver, November 24, 1982.
18. Canada, House of Commons, Minutes of Proceedings (etc.), No. 84 (May 1982) and No. 120 (March 1983).
19. Letter to Minister of Justice from Mayor Harcourt, February 9, 1983.
20. See Chief D.L. Winterton, "The Dilemma of our Prostitution Laws," **Canadian Police Chief**, April 1980 for a short discussion of their petitions.
21. Canada, House of Commons, Minutes of Proceedings (etc.), No. 90 and 96.
22. Witnesses from a number of police forces have outlined their position (which is summarized here) in various forms, including their own journals (see for example Chief D.L. Winterton's article "The Dilemma of our Prostitution Laws," in **Canadian Police Chief**, April 1980) and in testimony before the Justice Committee.
23. See Winterton, 1980, and House of Commons Issues No. 90 and 96.

24. Canadian Centre for Justice Statistics, Statistics Canada, Publication No. 85-20, 1981, Table I, p. 3. Prostitution offences include soliciting, procuring, bawdy houses and related offences as defined in the **Criminal Code**. Separate statistics are not available on a national level.
25. Canada, House of Commons, Minutes of Proceedings (etc.), No. 90:18.
26. The National Action Committee on the Status of Women, the B.C. Civil Liberties Association, the Vancouver Coalition for a Non-Sexist Criminal Code and the Canadian Association of Elizabeth Fry Societies have all recommended that sections 195.1 (soliciting) and 193 (keeping a common bawdy house) be repealed. The National Association of Women and the Law called for a repeal of 195.1 and suggested that the government consider amending Section 195 to permit a prostitute to run her business on her own premises. See House of Commons Issues No. 91, 90, 121 and 86 respectively for the arguments they presented to the Justice Committee.
27. The principle was elaborated by John Stuart Mill in **On Liberty** and has been endorsed by many people including the Canadian Committee on Corrections.
28. B.C. Civil Liberties Association, "Brief on Prostitution, Solicitation, Bawdy Houses and Related Matters." November 1982, p. 11.
29. For a more detailed description of this argument see House of Commons, Minutes of Proceedings (etc.), No. 90:39-41 or B.C. Civil Liberties Association, "Brief on Prostitution, Solicitation, Bawdy Houses and Related Matters." November 1982.
30. This association gave birth to the Alliance for the Safety of Prostitutes (ASP).
31. Canada, House of Commons, Minutes of Proceedings (etc.), No. 90:36, May 1982.
32. Canada, House of Commons, Minutes of Proceedings (etc.), No. 91:5, May 1982.
33. Canada, House of Commons, Minutes of Proceedings (etc.), No. 90:37, May 1982.
34. Eileen McLeod, **Women Working: Prostitution Now** (London: Croom Helm Ltd., 1982).
35. Claude Jaget, ed., **Prostitutes – Our Life** (Bristol, England: Falling Wall Press, 1980), pp. 171-173.
36. Jennifer James et al., **The Politics of Prostitution** (Seattle, Washington: Social Research Associates, 1977), p. 21.
37. Canada, House of Commons, Minutes of Proceedings (etc.), No. 91:17.
38. See CASH "Brief on Decriminalization of Prostitution," March 12, 1979; the CASH Fact Sheet; and the CASH information flyer.
39. This group endorsed the brief presented to the Justice Committee by the Vancouver Coalition for a Non-Sexist Criminal Code.
40. Members of several women's groups joined them on the march.

CHAPTER FIVE

1. Kathleen Barry, **Female Sexual Slavery** (New Jersey: Prentice-Hall, Inc., 1979), p. 108.
2. Charles Winick and Paul M. Kinsie, **The Lively Commerce: Prostitution in the United States** (Chicago: Quadrangle Books, 1971).
3. John Decker, **Prostitution: Regulation and Control** (Littleton, Colorado: Fred B. Rothman and Co., 1979), p. 96.
4. *Ibid.*, p. 101.
5. Jennifer James et al., **The Politics of Prostitution** (Seattle, Washington: Social Research Associates, 1977), p. 21.
6. National Organization for Women (NOW), **Broadsheets on Prostitution**, NOW Task Force on Prostitution (San Francisco: NOW, n.d.)
7. From Arthur Young, **Juvenile Prostitution: A Federal Strategy for Combatting Its Causes and Consequences** (Youth Development Bureau, Office of Human Development Services in the the Department of Health, Education and Welfare, Washington, D.C., June, 1978), as referred to in Debra Boyer and Jennifer James, "Juvenile Prostitution," in **The Female Offender**, eds., Curt Taylor Griffiths and Margit Nance (Burnaby, B.C.: Criminology Research Centre, Simon Fraser University, 1980).
8. National Organization for Women (NOW), **A Look at Prostitution**, NOW Task Force on Prostitution (San Francisco: NOW, March 1983), pp. 2-4.
9. Priscilla Alexander, **Working on Prostitution** (Los Angeles: National Prostitution Committee of the National Organization for Women), n.d.
10. J. Boles and C. Tatro, "Legal and Extra-Legal Methods of Controlling Female Prostitution – A Cross-Cultural Comparison," **International Journal of Comparative and Applied Criminal Justice**, vol. 2, no. 1, Spring 1978, p. 77.
11. Barry, p. 234.
12. Elizabeth Fry Society, Toronto Chapter, "Prostitution Fact Sheet" (Toronto: August, 1978). For NOW "Broadsheets on Prostitution," see note 6.
13. Richard Symanski, **The Immoral Landscape: Female Prostitution in Western Societies** (Toronto: Butterworths, 1981), p. 187.
14. Article from **The Economist**, in **The Globe and Mail**, Toronto, October 29, 1977.
15. *Ibid.*

16. United Nations Economic and Social Council, **Activities for the Advancement of Women: Equality, Development and Peace**. Report of Jean Fernand-Laurent, Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others (s.l.: United Nations, March 1983).

Report includes information on position of various church groups and tourism organizations opposed to sexual tourism.
17. Barry, pp. 112-113.
18. Symanski, pp. 115-116.
19. Barry, p. 113.
20. Gavin Hart, **Sexual Maladjustment and Disease: An Introduction to Modern Venereology** (Chicago: Nelson-Hall, Inc., 1977), p. 59.
21. James et al., p. 46.
22. Barbara Yandorf, "Prostitution as a Legal Activity: The West German Experience," **Policy Analysis**, vol. 5, no. 4, 1979, pp. 421-427.
23. **Ibid.**, pp. 430-431.
24. Symanski, p. 12.
25. Claude Jaget, ed., **Prostitutes – Our Life** (Bristol, England: Falling Wall Press, 1980), pp. 171-173.
26. Yandorf, p. 422.
27. Boles and Tatro, pp. 76-77.
28. Yandorf, p. 427.
29. Barry, p. 111.
30. Decker, p. 115.
31. Jaget, p. 21.
32. Mandy Merck, "Organizing Prostitutes," **Time Out**, May 13-19, 1977, unpaginated.

A SELECTED PARTIALLY ANNOTATED BIBLIOGRAPHY ON PROSTITUTION

General

Material dealing with the legal and social context in which prostitution occurs, including discussions of sexuality, family violence, criminal law, the status of women, social control.

Studies of Contemporary Adult Prostitution

Sociological, psychological, criminological, and journalistic studies, including material with both traditional and feminist perspectives.

Legal and Social Policy

National and international approaches to legal and social control of prostitution.

International Studies

Comparisons of prostitution, its control, and related activities.

Prostitution from the Prostitute's Perspective

Juvenile Prostitution

Historical

GENERAL

Adler, Freda and Rita J. Simon. **The Criminology of Deviant Women.** Boston: Houghton Mifflin Company, 1979.

Barry, Kathleen. **Female Sexual Slavery.** Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1979.

An analysis of the way male-dominated society has exploited women's sexuality. Includes information on trafficking in women, patterns of procuring and a discussion of the legal approaches used to control prostitution.

- * British Columbia. Ministry of the Attorney General, Co-ordinated Law Enforcement Unit. **Third Findings Report on Organized Crime in British Columbia.** Victoria: Ministry of the Attorney General, 1979.

This report has a small section on prostitution. Findings show that prostitution in B.C. does "not exhibit the classic features of organized crime."

Bryant, Clifton D., ed. **Sexual Deviancy in Social Context.** New York: New Viewpoints, 1977.

- * Canada. Department of Justice. **The Criminal Law in Canadian Society.** Ottawa: Department of Justice, 1982.
- * Canada. Department of Justice. **The Criminal Law in Canadian Society: Highlights.** Ottawa: Department of Justice, 1982.
- * Canada. Health and Welfare Canada, Bureau of Epidemiology. **Sexually Transmitted Disease in Canada, 1981.** Ottawa: Health and Welfare Canada, 1982.
- * Canada. Law Reform Commission of Canada. **Report on Sexual Offences.** Ottawa: Supply and Services Canada, 1978.
- * Canada. **Report of the Royal Commission on the Status of Women in Canada.** Ottawa: Information Canada, 1970.
- * Canada. Statistics Canada. **Crime and Traffic Enforcement Statistics.** Ottawa: Supply and Services Canada, 1980, catalogue 85-205.
- * Canada. Statistics Canada. **Justice Statistics Division, 1978 Criminal Court Statistics, Final Report.** Ottawa: Supply and Services Canada, December 1980.

Catterall, R.D. and C.S. Nicol, eds. **Sexually Transmitted Diseases.** Proceedings of a conference sponsored jointly by the Royal Society of Medicine and the Royal Society of Medicine Foundation. London, June 23-25, 1975. London, New York: Academic Press, 1976.

* Indicates Canadian source

- * Clark, S.D. **The Social Development of Canada.** Toronto: University of Toronto Press, 1942.

Edwards, Susan S.M. **Female Sexuality and the Law: A Study of Constructs of Female Sexuality as they Inform Statute and Legal Procedure.** Oxford: Martin Robertson (Law in Society Series), 1981.

Eichler, Margrit. **The Double Standard: A Feminist Critique of Feminist Social Science.** London: Croom Helm Ltd., 1980.

Ericsson, Lars O. "Charges against Prostitution: An Attempt at a Philosophical Assessment." **ETHICS**, vol. 90, April 1980, pp. 335-366.

- * Galardo, A.F., L. Belzile and E. Paradis. **Nouvelle optique de la justice face aux perversions sexuelles.** Montreal: Clinique Pinel, 1975.

Report on 216 sexual offenders at Pinel External Treatment Hospital, Montreal.

Hart, Gavin. **Sexual Maladjustment and Disease: An Introduction to Modern Venereology.** Chicago: Nelson-Hall Inc., 1977.

Hutter, B. and G. Williams, eds. **Controlling Women, the Normal and the Deviant.** London: Croom Helm Ltd., 1981.

- * **Incest: A London Legal Handbook.** London: Faculty of Law, University of Western Ontario, 1981.

James, Jennifer. "Women as sexual criminals and victims." In **Sexual Scripts: The Social Construction of Female Sexuality.** Eds. P. Schwartz and J. Laws. Hinsdale: Dryden Press, 1977, chapter 6.

Kinsey, Alfred C., Wardell B. Pomeroy and Clyde E. Martin. **Sexual Behavior in the Human Male.** Philadelphia: W.B. Saunders, 1948.

- * Quebec. Commission de Police du Québec. **Crime organisé et le monde des affaires.** Rapport d'enquête sur le crime organisé et recommandations. Quebec: Éditeur officiel, 1977.

Quebec Police Commission's report on investigations into Montreal's underworld activities.

- * Rogers, R.S. **Sex and the Law in Canada.** Text, cases and comments. Ottawa: Policy Press, 1962.
- * Rozovsky, L.E. and F.A. Rozovsky. **Legal Sex.** Toronto: Doubleday Canada Ltd., 1982.

Smart, Carol and Barry Smart, eds. **Women, Sexuality and Social Control.** London: Routledge and Kegan Paul Ltd., 1978.

Stein, Martha L. **Lovers, Friends and Slaves: The Nine Male Sexual Types.** Berkeley: G.P. Putnam's Sons, 1974.

This study of male sexuality is based on the results of a four-year study of the behaviour of 1,242 male clients with 64 call girls. The data was obtained by direct observation between 1968 and 1972. The author was able to watch their social and sexual activities without her presence being known to the men.

Stovling, Britta. "A Swedish Feminist Looks at Pornography." In **Take Back the Night: Women on Pornography.** Ed. Laura Lederer. New York: William Morrow, 1980.

Sweetman, Rosita. **On Our Backs: Sexual Attitudes in a Changing Ireland.** London: Pan Books, 1979.

- * Toronto. Special Committee: Places of Amusement. **Report and Recommendations.** Toronto: Special Committee: Places of Amusement, 1977.

United Nations. Economic and Social Council. **Activities for the Advancement of Women: Equality, Development and Peace.** Report of Jean Fernand-Laurent, Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others. s.l.: United Nations, 1983.

- * Van Stock, Mary. **The Battered Child.** Toronto: McClelland and Stewart, 1979.

- * Vaz, E.W. and A.Q. Lodhi, eds. **Crime and Delinquency in Canada.** Scarborough: Prentice-Hall of Canada Ltd., 1979.

Examines three aspects of criminology in Canada (national crime statistics, theories of juvenile delinquency, crimes in the form of market transactions; includes prostitutes and rounders). See also "Rounders" by Marie-Anne LeGrand, Sir George Williams University, pp. 327-331, and "Prostitutes" by Clive L. Copeland and Morris A. McDonald, pp. 332-341.

- * Welsh, T.E. "Organized Crime Committee." **Canadian Police Chief**, vol. 69, no. 4, October 1980, pp. 46-47 and 50-58.

1979 report of Canada's Organized Crime Committee. Discusses involvement of organized crime and outlawed motorcycle gangs in prostitution.

West, D.J. **Sex Offenders in the Criminal Justice System.** s.l.: s.n., 1980.

STUDIES OF CONTEMPORARY ADULT PROSTITUTION

Adler, Freda. "The Oldest and Newest Profession." In **The Criminology of Deviant Women.** Eds. Freda Adler and Rita James Simon. Boston: Houghton Mifflin Company, 1979, pp. 213-222.

- Alexander, Priscilla. "Arresting Facts about Prostitution." *Sojourner*, April 1981.
- Alexander, Priscilla. "Massage Parlours and the City." *The Examiner*. San Francisco: Tuesday, July 8, 1980, p. 83.
- Alexander, Priscilla and Margo St. James. "Prostitutes Question Porno's Legitimacy." *Womenews*, vol. 6, no. 1, March 1981.
- * Allen, Glen. "Prostitution Moves to the Suburbs." *The Gazette*. Montreal: Saturday, July 23, 1983, pp. A-1 and A-2.
- Barnett, Harold C. "The Political Economy of Rape and Prostitution." *The Review of Radical Political Economics*, vol. 8, Spring 1976, pp. 59-68.
- Beck, Robert (Iceberg Slim). *Pimp: The Story of My Life*. Los Angeles: Holloway House, 1969.
- Benjamin, Harry and R.E.L. Masters. *Prostitution and Morality: A Definitive Report on the Prostitute in Contemporary Society and an Analysis of the Causes and Effects of the Suppression of Prostitution*. New York: Julian Press, 1964.
- * Brault, Marie-Marthe. "La prostitution féminine: analyse et interprétation interactionniste d'un phénomène de déviance." Doctoral thesis in anthropology. University of Montreal, 1981 (unpublished).
- Bryan, James H. "Occupational Ideologies and Individual Attitudes of Call Girls." *Social Problems*, vol. 13, 1966, pp. 441-450.
- Bryant, Clifton D. and Eddie Palmer. "Massage Parlors and 'Hand Whores': Some Sociological Observations." *The Journal of Sex Research*, vol. 11, 1975, pp. 227-241.
- * Buress, Charles. "Prostitutes Lead Life of Ignorance, Brutality." *The Citizen*. Ottawa: June 7, 1982, p. 10.
- Burnstin, E. Joseph Jr. and Jennifer James (Fetz). "Prostitution in Seattle." *Washington State Bar News*, vol. 25, no. 8, August-September 1971, pp. 5-30.
- Carroll, Jane. "A New Breed of Hooker: The Feminist Prostitute." *California Living Magazine*. September 19, 1982.
- * Elizabeth Fry Society of Canada. "Prostitution Fact Sheet." Toronto: Elizabeth Fry Society of Canada, 1978.
 - * Forbes, G.A. *Street Prostitution in Vancouver's West End: Prepared for Vancouver Police Board and Vancouver City Council*. Vancouver: Vancouver Police Department, 1977.
 - * Gemme, Robert. *Aspects économiques de la prostitution à Montréal*. Montreal: University of Montreal, 1970.

Goldstein, Paul J. **Prostitution and Drugs**. Lexington, Massachusetts: Lexington Books, 1979.

Greenwald, Harold. **The Call Girl: A Social and Psychoanalytic Study**. New York: Ballantine Books, 1958.

Henning, Jean-Luc. **Les garçons de passe: enquêtes sur la prostitution masculine**. Paris: Éditions Libres/Hallier, 1978.

Henriques, Fernando. **Prostitution and Society**, vol. III, **Modern Sexuality**. London: 1968.

Heyl, Barbara Sherman. "Prostitution: An Extreme Case of Sex Satisfaction." In **The Criminology of Deviant Women**. Eds. Freda Adler and Rita James Simon. Boston: Houghton Mifflin Company, 1978, pp. 196-209.

- * Hoegg, Lois. "Prostitution." Working paper prepared for criminology course. Dalhousie University, Faculty of Law, Halifax, 1982.

James, Jennifer. "Prostitutes and Prostitution." In **Deviants: Voluntary Actors in a Hostile World**. Eds. E. Sagarin and F. Montanino. Glenview, Illinois: General Learning Press, Scott, Foresman and Co., 1977.

James, Jennifer et al. **The Politics of Prostitution**. Seattle, Washington: Social Research Associates, 1977.

James, Jennifer and Jane Meyerding. "Early Sexual Experience and Prostitution." **American Journal of Psychiatry**, vol. 134, December 1977, pp. 1381-1390.

James, Jennifer and Jean Withers. "Evaluating Prostitution: The Feminist Dilemma." In **The Politics of Prostitution**. Jennifer James et al. Seattle, Washington: Social Research Associates, 1975, pp. 1-7.

Kingsley, Davis. "Prostitution." In **Contemporary Social Problems**. Eds. R.K. Merton and R.A. Nesbitt. New York: Harcourt, Brace and World, 1961, pp. 262-290.

- * Kohlmeyer, Klaus Kim. "An Ethnographic Study of Street Prostitution in Vancouver, British Columbia." M.A. thesis in criminology. Simon Fraser University, 1982 (unpublished).
 - * Layton, Monique. **Prostitution in Vancouver (1973-75): Official and Unofficial Reports**. Vancouver: Vancouver Police Commission, 1975.
- Levy, Howard S. **Sex, Love and the Japanese**. Washington, D.C.: The Warm-Soft Village Press, 1971.
- * Limoges, Thérèse. **La prostitution à Montréal: comment, pourquoi certaines femmes deviennent prostituées**. Montreal: Éditions de l'Homme, 1967.

Includes a bibliography.

MacMillan, J. "Rape and Prostitution." **Victimology**, vol. 1, no. 3, Fall 1976, pp. 414-420.

McIntosh, M. "Who Needs Prostitutes? The Ideology of Male Sexual Needs." In **Women, Sexuality and Social Control**. Eds. Smart and Smart. London: Routledge and Kegan Paul Ltd., 1978, pp. 53-64.

McLeod, Eileen. **Women Working: Prostitution Now**. London: Croom Helm Ltd., 1982.

Provides an in-depth study of prostitutes' working conditions, their clients' circumstances, the operation of the law and prostitutes' campaigns. Author is a founding member of PROS (Program for Reform of the Law on Soliciting), a prostitutes' rights campaign organized in England.

Milner, Christina and Richard Milner. **Black Players: The Secret World of Black Pimps**. New York: Bantam Books, 1973.

- * Nadeau, Jean-Guy. **Entre le fantasme et la reconnaissance – étude pastorale de pratiques de prostitution**. Doctoral thesis in theology. Montreal: University of Montreal, 1983.

National Organization for Women (NOW). **Broadsheets on Prostitution**. NOW Task Force on Prostitution. San Francisco: NOW, n.d.

National Organization for Women (NOW). **A Look at Prostitution**. NOW Task Force on Prostitution. San Francisco: NOW, March 1983.

National Public Opinion Research Institute. **The Japanese People Look at Prostitution**. Tokyo: National Public Opinion Research Institute, 1952.

- * Prus, Robert and Stylianoss, Irini. **Hookers, Rounders and Desk Clerks**. Toronto: Gage Publishing Ltd., 1980.
- * Ridington, Jillian and Barb Findlay. **Pornography and Prostitution**. Vancouver: Vancouver Status of Women, November 1981.

St. James, Margo. "Prostitution and Addiction." From the Proceedings of the First International Action Conference on Substance Abuse. Phoenix, Arizona: Do it Now Foundation, 1977.

St. James, Margo and Priscilla Alexander. "Prostitution: The Right to Choose." In **Every Woman's Legal Guide**. Eds. B. Burnett and B. Greenman. New York: Doubleday, 1983.

Scarlet, Iain. **The Professionals: Prostitutes and Their Clients**. London: Sidgwick and Jackson, 1972.

Shaw, David. "Rentagirl: A Look at Escort Agencies." In **Sexual Deviancy in Social Context**. Ed. Clifton D. Bryant. New York: New Viewpoints, 1977, pp. 195-201.

Sheehy, Gail. **Hustling: Prostitution in Our Wide Open Society**. New York: Dell, 1974.

Storz, Moni Lai. "Cabaret Girls in Singapore: The Other Face of Prostitution." **Second Women and Labour Conference Papers**. 1980.

- * Stuckey, Johanna. "A Feminist Looks at Prostitution." In **Sexual Behaviour in Canada: Patterns and Problems**. Ed. B. Schlesinger. Toronto: University of Toronto Press, 1977, pp. 221-234.
- * Texier, Catherine and Marie-Odile Vézina. **Profession Prostituée**. Ottawa: Éditions Libre Expression, 1978.
- * Texier, Catherine and Marie-Odile Vézina. "Réflexion choc sur la relation homme-femme." **Châtelaine**, vol. 19, no. 3, March 1978, pp. 44-45, 88-90, 92, 94, 96 and 98.

Thitsan, Khin. "Providence and Prostitution: Image and Reality for Women in Buddhist Thailand." **Change: International Reports, Women and Society**. September 1980.

Thompson, Val. "Prostitutes: Getting Free from Prison." **Spare Rib**. London: August 1982, p. 14.

United States. Department of Health, Education and Welfare, Youth Development Bureau, Office of Human Development Services. **Juvenile Prostitution: A Federal Strategy for Combatting its Causes and Consequences**. Prepared by Arthur Young. Washington, D.C.: Health, Education and Welfare, June 1978. As referred to in Boyer and James, "Juvenile Prostitution," in **The Female Offender**, eds. Curt Taylor Griffiths and Margit Nance, Burnaby, British Columbia: Criminology Research Centre, Simon Fraser University, 1980.

Van Haecht, A. "Sociologie de la déviance et sociologie de la prostitution." **Recherches sociologiques**, vol. 8, no. 3, 1977, pp. 301-322.

Wilcox, R.R. "Prostitution and Venereal Disease." **British Journal of Venereal Disease**, vol. 38, 1962, pp. 37-42.

Winick, Charles and Paul M. Kinsie. **The Lively Commerce: Prostitution in the United States**. Chicago: Quadrangle Books, 1971.

Winick, Charles and Paul M. Kinsie. "Prostitution." **Sexual Behavior**, vol. 3, no. 1, 1973, pp. 33-43.

LEGAL AND SOCIAL POLICY

Alexander, Priscilla. **Working on Prostitution**. Los Angeles: National Prostitution Committee of the National Organization for Women. n.d.

For copies write to the National Prostitution Committee, 2417
Riverside Place, Los Angeles, CA 90039.

- * Bureau of Municipal Research (BMR). **Civic Affairs: Street Prostitution in Our Cities.** Toronto: BMR, February 1983.

Identifies the problems and reasons for the recent increase in complaints about prostitution in Toronto and reviews the action municipalities can take to alleviate the concerns of citizens.

- * Canada. House of Commons. Standing Committee on Justice and Legal Affairs. **Respecting: Order of Reference Respecting Soliciting for the Purpose of Prostitution.** Issue nos. 83-86, 88, 90,91, 94, 96,99, 105,118-121, 125 and 126. Ottawa: Supply and Services Canada, May 1982-March 1983.
- * Canada. House of Commons. Standing Committee on Justice and Legal Affairs. **Respecting: Order of Reference Respecting Soliciting for the Purpose of Prostitution. "The Seventh Report to the House."** No. 126, March 24, 1983. Ottawa: Supply and Services Canada, 1983.

Caugherty, Madeleine. "The Principal of Harm, Prostitution." **Denver Law Review**, vol. 51, 1974, pp. 235-262.

- * Committee Against Street Harassment (CASH). "Brief on Decriminalization of Prostitution." Toronto: CASH, March 1979.

A brief prepared by CASH, Canada's first organization for prostitutes.

Committee on Homosexual Offences and Prostitution. **The Wolfenden Report.** New York: Stein and Day, 1963.

This committee, appointed in England in 1954, was directed to look into the law and practice relating to offences against the criminal law in connection with prostitution and solicitation for immoral purpose. The committee heard testimony from professional public bodies but not from prostitutes or their advocates or from women's groups. As a result of its report, the **Street Offences Act** was enacted in 1959. It states that "it shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution."

- * Dwight-Spore, Margaret. "Speaking Up for Our Sisters: Decriminalization of Prostitution." **Fireweed**, vol. 1, Autumn 1978, pp. 23-26.
- * Elizabeth Fry Society of Canada. "Prostitution Fact Sheet." Toronto: Elizabeth Fry Society of Canada, 1978.

Griffin, Moira K. "Wives, Hookers and the Law." **Student Lawyer**, January 1982, pp. 19-21 and 36-39.

Haft, M.G. "Hustling for Rights." **The Civil Liberties Review**, Winter/Spring 1974, pp. 8-26.

Hart, H.L.A. "The Use and Abuse of Criminal Law." **Lawyer**, vol. 8, October 1975, pp. 7-12.

- * Hunter, V. Diane. **Street Prostitution in Calgary: The Legislative Dilemma and Control Alternatives**. Presented for consideration by the Calgary Police Commission. Calgary: 1981.

James, Jennifer and Mary Owen. "The Development of Model Prostitution Laws." In **Politics of Prostitution**. J. James et al. Seattle, Washington: Social Research Associates, 1975, pp. 75-114.

Jennings, M. Anne. "The Victim as Criminal: A Consideration of California's Prostitution Law." **California Law Review**, vol. 64, September 1976, pp. 1235-1284.

- * Layton, Monique. "The Ambiguities of the Law or the Street Walker's Dilemma." **Chitty's Law Journal**, vol. 27, no. 4, 1975, pp. 109-120.

Milman, B. "New Rules for the Oldest Profession: Should We Change Our Prostitution Laws?" **Harvard Women's Law Journal**, vol. 3, Spring 1980, pp. 1-82.

- * Montreal Association of Women and the Law (MAWL). "Position Paper of MAWL on Soliciting." November 1980 (unpublished).
- * National Association of Women and the Law. "For Discussion: Prostitution." **National Association of Women and the Law**, vol. 5, no. 2, June 1983, pp. 22-80.

National Organization for Women (NOW). **A Look at Prostitution**. NOW Task Force on Prostitution. San Francisco: NOW, March 1983.

- * Osgoode Women's Caucus. "Brief on Prostitution." Toronto: Osgoode Hall, 1981 (unpublished). Revised and edited by the 1980-1981 caucus.

Richards, David A.J. "Commercial Sex and the Rights of the Person." **University of Pennsylvania Law Review**, vol. 129, May 1979, p. 1195 ff.

- * Ridington, Jillian. **Prostitution Law: An International Comparison**. A background paper prepared for the Canadian Advisory Council on the Status of Women (CACSW). Ottawa: CACSW, 1983.
- * Rumack, Martin. "Prostitution: A Penal or a Medical Problem." Parts 1 and 2. **Chitty's Law Journal**, vol. 20, no. 1, 1972, pp. 10-21; vol. 20, no. 2, 1972, pp. 49-57.

Discussion based on an examination of 20 Toronto streetwalkers from the ages of 16 to 47.

Sion, Abraham A. **Prostitution and the Law**. London: Faber and Faber, 1977.

Although fairly recent, it is based for the most part on old documentation, complemented by some new original data. Sociopsychological analysis. Sion spoke to more than 40 prostitutes, mostly in London. Also visited Hamburg.

United Nations. **Study on Traffic in Persons and Prostitution.** New York: United Nations Department of Economic and Social Affairs, 1959.

- * Verbugge, Natana. "Prostitution: A Legal or Moral Question – Some Suggestions for Reform." **Part II of Prostitution: Past, Present and Future Legislation.** Vancouver: University of British Columbia, Law Faculty, March 1975.

Vickers, J. "Prostitution in the Context of the Street Offences Act." In **Sex Offenders in the Criminal Justice System.** Ed. D.J. West. s.l: s.n., 1980, pp. 114-120.

Describes some negative consequences of U.K. 1959 **Street Offences Act** prohibiting solicitation by prostitutes.

- * Winterton, Chief D.L. "The Dilemma of our Prostitution Laws." **Canadian Police Chief.** April 1980, pp. 5-6.

Women Endorsing Decriminalization. "Prostitution: A Non-Victim Crime?" **Issues in Criminology**, vol. 8, Fall 1973, pp. 137-162.

Yandorf, Barbara. "Prostitution as a Legal Activity: The West German Experience." **Policy Analysis**, vol. 5, no. 4, 1979, pp. 417-433.

Examines effect of legalization on social aspects of prostitution; advantages and disadvantages of different ways of zoning prostitution; effectiveness of civil sanctions.

INTERNATIONAL STUDIES COMPARING PROSTITUTION, ITS CONTROL, AND RELATED ACTIVITIES

Boles, J. and C. Tatro. "Legal and Extra-Legal Methods of Controlling Female Prostitution – A Cross-Cultural Comparison." **International Journal of Comparative and Applied Criminal Justice**, vol. 2, no. 1, Spring 1978, pp. 71-85.

Suggests that the function of prostitution laws is primarily "symbolic" in that they define "good and evil" rather than effectively control or regulate prostitution. Also suggests that the more repressive the laws, the more likely prostitutes are to be dependent on pimps.

- * Currie, A.J. and J.F. Decker. "The Prostitute, Regulation and Control. A Comparative Study." Dissertation as reprinted in "Materials on Prostitution." Edited by Ms. Lutterus, University of British Columbia, Law Faculty, 1973 (unpublished).

Decker, John. **Prostitution: Regulation and Control**. Littleton, Colorado: Fred B. Rothman and Co., 1979.

Comprehensive analysis of the history of the treatment of prostitutes under the law, including the development of the law, a survey of the approaches taken by several countries, methods and discriminatory enforcement of the laws, and proposals for a mildly regulated form of decriminalization.

Henriques, Fernando. **Prostitution and Society: Prostitution in Europe and the Americas**. New York: Citadel Press, 1965.

ISIS: International Bulletin, no. 13, November 1979.

A special issue devoted to tourism and prostitution. Includes articles on the whore/madonna dichotomy, the relationship between tourism and prostitution in a number of Asian countries and the relationship between U.S. military bases and prostitution.

ISIS: International Bulletin, no. 25. "Prostitution and Action." Geneva and Rome: The Isis Collective, Winter 1982-83, pp. 24-25.

Russell, Diana E.H. and Nicole Van de Ven, eds. **Crimes Against Women: Proceedings of the International Tribunal**. Millbrae, California: Les Femmes, 1976.

Includes a chapter on prostitution in Japan, Korea and the United States.

- * Symanski, Richard. **The Immoral Landscape: Female Prostitution in Western Societies**. Toronto: Butterworths, 1981.

Includes Canadian content. Has an extensive bibliography.

PROSTITUTION FROM THE PROSTITUTE'S PERSPECTIVE

- * Adams, Martha. **Martha Adams par Martha**. Montreal: Éditions du Jour, 1972.
- * Allen, Glen. "Why a Mom is Working in a Massage Parlor." **The Gazette**. Montreal: July 23, 1983, p. A-2.

Belladonna, Judith. **Folles femmes de leur corps: la prostitution**. Fontenay-sous-Bois, France: 1977.

With the participation of Guy Hocquenghem (et al.) and several prostitutes.

Chantal, Jean-Bernard. **Nous ne sommes pas nées prostituées**. Paris: Éditions ouvrières, 1978.

- * Cordelier, Jeanne et Martine Laroche. **La dérobade**. Montreal: Livres, Revues et Presse, 1977.
- * Dudley, Cole. "The Alliance for the Safety of Prostitutes." **Kinesis**, May 1983.

An interview with the organizers of this Vancouver-based group.

Jaget, Claude, ed. **Prostitutes – Our Life**. Bristol, England: Falling Wall Press, 1980.

A series of interviews with six of the prostitutes who occupied the cathedrals in Lyons, France, in 1975, to protest the treatment of prostitutes by police and to call attention to a series of murders of prostitutes. Includes an introduction by the English Collective of Prostitutes, and an afterword by Margo St. James, founder of COYOTE.

Merck, Mandy. "Organising Prostitutes." **Time Out**, May 13-19, 1977, unpaginated.

Millett, Kate. **The Prostitution Papers**. New York: Ballantine Books, 1971.

Recorded interviews with prostitutes offer an insight into their lives.

PLAN (Prostitution Laws are Nonsense). "A Statement of the British Prostitute's Organization." **Coyote Howls**, vol. 4, Autumn 1977, p. 10.

- * PROST. **Virginie (Prostituée)**. Montreal: Éditions Québecor, collection Témoignage vécu, 1979.
- * Woodward, Jean. "Prostitution from the Inside: We Look at One Woman's Experience." **Kinesis**, July 1980.

JUVENILE PROSTITUTION

- * Boyer, D. and James J. "Juvenile Prostitution." In **Female Offenders**. Eds. Curt T. Griffiths and Margit Nance. Burnaby, British Columbia: Simon Fraser University Criminology Research Centre, 1980, pp. 99-118.

The causes for entrance into prostitution by female adolescents are outlined. From 1967 to 1976 there was an increase of 242 percent in female adolescent prostitution.

Bracey, Dorothy H. "Concurrent and Consecutive Abuse: The Juvenile Prostitute." In **The Criminal Justice System and Women**. New York: Clark Boardman Co., 1982.

- * Brenkolt-Hogarth, Rebecca. "A Report on Juvenile Prostitution in Downtown Vancouver." Vancouver: June 1981 (unpublished).

Brown, Marjorie E. "Teenage Prostitution." **Adolescence**, vol. XIV, no. 56, Winter 1979, pp. 665-680.

"L'exploitation sexuelle des jeunes." **Vie ouvrière**, vol. XXXII, no. 165, November 1982.

Gray, Diana. "Turning-Out: A Study of Teenage Prostitution." **Urban Life and Culture**, vol. 1, 1973, pp. 401-425.

- * Groupe de travail sur la prostitution des mineurs. **La prostitution des jeunes? Connais pas . . .** Montreal: Un groupe de travail sur la prostitution des mineurs, 1980.
 - * Groupe de recherche-intervention auprès des mineur(e)s prostitué(e)s (G.R.I.M.P.). **Rapport du groupe de recherche-intervention auprès des mineur(e)s prostitué(e)s.** (G.R.I.M.P.). Montreal: Le Centre des services sociaux du Montréal Métropolitain, August 1982.
 - * Groupe de travail sur la prostitution chez les mineurs. **Rapport sur la prostitution chez les mineurs.** Montreal: Le groupe de travail sur la prostitution chez les mineurs, April 1980.
- LeMoal, Paul Guillaume Marie. **Étude sur la prostitution des mineurs: problèmes sociaux, psychologiques et psychiatriques observés auprès de cent prostituées mineurs.** Paris: Éditions sociales françaises, 1969.
- * Newman, Frances and Paula J. Caplan. "Juvenile Female Prostitution as Gender Consistent Response to Early Deprivation." **International Journal of Women's Studies**, vol. 5, 1982, pp. 128-137.
 - * Rabkin, Brenda. "Baby Pros." **Homemaker's**, vol. 18, no. 5, June 1983, pp. 36-52.
 - * Ruffo, Andrée. **Juvenile Prostitution: The Child Deprived of a Childhood.** Background document prepared for the Canadian Advisory Council on the Status of Women (CACSW). Ottawa: CACSW, 1983.
 - * Task Force on Juvenile Prostitution. **Final Report of the Task Force on Juvenile Prostitution.** Vancouver: Task Force on Juvenile Prostitution, November 1981.
 - * **The Toronto Star.** "Sex Recreation, Teen Prostitute Freed." Toronto: January 26, 1979.

Vitaliano, Peter Paul, Debra Boyer and Jennifer James. "Perceptions of Juvenile Experience: Females Involved in Prostitution Versus Property Offences." **Criminal Justice and Behaviour**, vol. 8, no. 3, September 1981, pp. 325-342.

Vitaliano, Peter Paul, Jennifer James and Debra Boyer. "Sexuality of Deviant Females: Adolescent and Adult Correlates." **Social Work**, November 1981, pp. 468-472.

HISTORICAL

Acton, L. **Prostitution Considered in its Moral, Social and Sanitary Aspects.** London: 1857.

Ball, Christine. "Women, the Law and the Grip of Traditions: Victorian Notions of Prostitution and Their Impact on 20th Century Law." Paper presented at Learned Societies meetings, June 1983 (unpublished).

- * Brookig, Lucy W. "Prostitution in Toronto, 1911." In **The Proper Sphere: Women's Place in Canadian Society.** Eds. Ramsay Cook and Wendy Mitchinson. Toronto: Oxford University Press, 1976, pp. 241-249.

The author relates incidences of prostitution in Toronto.

Bullough, Vern and Bonnie Bullough. **Prostitution: An Illustrated Social History.** New York: Crown Publishers, Inc., 1978.

A survey of the way various cultures have dealt with prostitution at various times. Illustrated with pornography from the time and place showing the change in the 19th century when pornography became more hostile.

- * Clark, C.S. **Of Toronto The Good.** Montreal: The Toronto Publishing Co., 1898.

Connelly, Mark Thomas. **The Response to Prostitution in the Progressive Era.** Chapel Hill, North Carolina: The University of North Carolina Press, 1980.

Corbin, Alain. **Les filles de noce: misère sexuelle et prostitution: 19e et 20e siècles.** Paris: Aubien Montaigne, 1978.

- * Fingard, Judith. "The Social Evil in Halifax in the Mid-19th Century." Paper available from Prof. J. Fingard, History Department, Dalhousie University, 1977 (unpublished).

Flexner, Abraham. **Prostitution in Europe.** New York: Century, 1914.

- * Gray, James H. **Red Lights on the Prairies.** Toronto: MacMillan, 1971.

Katz, Michael. **The People of Hamilton.** Cambridge: Harvard University Press, 1975.

Lambrose, Cesare. **La femme criminelle et la prostituée.** Translated from the Italian. Paris: F. Alean, 1896.

- * Latham, Barbara and Cathy Kess, eds. **In Her Own Right.** Victoria, British Columbia: Camosun College, 1980.

League of Nations. **Report of the Special Body of Experts on Traffic in Women and Children.** Geneva: League of Nations, 1927.

League of Nations. **Traffic in Women and Children: Work of the Bandoeng Conference.** Geneva: League of Nations, 1937.

- * Newman, Frances, Elizabeth Cohen et al. **Historical Perspectives on the Study of Female Prostitution.** Presented at the Third Institute on Women and Psychology, sponsored by the Canadian Psychology Association (CPA) Section on Women and Psychology. Toronto, June 1981.

Nield, Keith, ed. **Prostitution in the Victorian Age.** England: Gregg International Publishers, 1973.

O'Faolain, Julia and Lauro Martines, eds. **Not in God's Image: Women in History from the Greeks to the Victorians.** New York: Harper and Row, 1973.

Includes a chapter on prostitution in France from the 15th to 19th centuries. Some material relating to England in the mid-1800's.

Rosen, Ruth. **The Lost Sisterhood: Prostitution in America 1900-1918.** Baltimore: Johns Hopkins University Press, 1982.

Rosen, Ruth and Sue Davidson, eds. **The Maimie Papers.** Old Westbury, New York: Feminist Press, 1977.

A collection of letters written by a former prostitute between 1910 and 1922.

- * Rotenberg, Lori. "The Wayword Worker: Toronto's Prostitute at the Turn of the Century." In **Women at Work, Ontario, 1850-1930.** Toronto: Women's Press, 1974.
- * Senior, Eleanor. **British Regulars in Montreal.** Montreal: McGill Queen's Press, 1981.

Sigsworth, E.M. and T.J. Wyke. "A Study of Victorian Prostitution and Venereal Disease." In **Suffer and Be Still: Women in the Victorian Age.** Ed. Martha Vicinus. Bloomington: Indiana University Press, 1972.

Smith-Rosenberg, Carroll. "Beauty, the Beast and the Militant Woman: A Case Study in Sex Roles and Social Stress in Jacksonian Democracy." In **A Heritage of Her Own: Towards a New Social History of American Women.** Eds. Cott and Pleck. New York: Simon and Shuster, 1979.

Walkowitz, Judith. "Male Vice and Feminist Virtue: Feminism and the Politics of Prostitution in 19th Century Britain." **History Workshop Journal**, Issue 13, Spring 1982.

Walkowitz, Judith R. "The Politics of Prostitution." **Signs**, vol. no. 1, Autumn 1980, pp. 123-125.

A history of feminist campaigns against commercialized sex in the U.S. and U.K.

Walkowitz, Judith R. **Prostitution and Victorian Society**. Cambridge: Cambridge University Press, 1981.

Provides extensive detail about the feminist movement to repeal the Contagious Diseases Acts in England in the 1860's and 1870's, a movement led by Josephine Butler.

- * Watt, D.A. **Moral Legislation: A Statement Prepared for the Information of the Senate**. Montreal: Gazette Printing Co., 1890.
- * Wells, Debi. **The Social History of Prostitution in Canada**. A background paper prepared for the Canadian Advisory Council on the Status of Women (CACSW). Ottawa: CACSW, 1983.

Wells, Jess. **A Herstory of Prostitution in Western Europe**. Berkeley: Shameless Hussy, 1982.

Documents the structures imposed by the patriarchy on prostitution, from ancient Greece to Victorian England.

APPENDIX A

The following people provided the researchers with information and perspectives on prostitution and related subjects. While their help is very much appreciated, the final results of the study are the product and responsibility of the Council and its research staff.

Consultation for Research Planning*

Backhouse, Constance	Faculty of Law, University of Western Ontario
Boivin, Denis	Agent de développement, Comité de la protection de la jeunesse, Montréal
Bouchard, Hélène	Member of Groupe-recherche sur la prostitution chez les mineurs
Dwight-Spore, Margaret	Founding member of CASH (Committee Against Street Harassment), Ex-prostitute, Toronto
Flanagan, Tom	Deputy Chief of Police, Ottawa; Chairman, Law Amendments Committee, Canadian Association of Chiefs of Police
Hoegg, Lois	Member, Newfoundland Bar, National Association of Women and the Law, Steering Committee, Atlantic Region
Jefferson, Christie	Criminologist and Executive Director of the Canadian Association of Elizabeth Fry Societies
Kane, Catherine	Department of Justice
Lautt, Melanie	Criminologist, Associate Professor, Department of Sociology, University of Saskatchewan, Saskatoon
Platt, Priscilla	Member of the Ontario Bar
Rent, David	Halifax Police, Morality Squad
Riding, Milo	Founding member of Halifax Downtown Residents' Association
Ruffo, Andrée	Member of Groupe-recherche sur la prostitution chez les mineurs, Member of Quebec Bar
Thomson, Tamra	Status of Women Canada, Ottawa
Wells, Debi	Researcher, New Westminster, British Columbia

* Affiliations and positions as of December 1983.

Interviews in Course of Research

The Alliance for the Safety of Prostitutes (ASP)	Marie Arrington Joni Miller Sally de Quadros
Barlow, Maude	President, Coalition Against Media Pornography
Bourne, Steve	Gordon House Neighbourhood Services, Vancouver
Brown, May	Alderwoman, City of Vancouver
Campbell, Faye	Department of Justice
Carney, Pat, M.P. (P.C.)	Member of the Justice Committee
Concerned Residents of the West End (CROWE)	Gordon Price Gerry Staffort Alish Boyce
Crossland, Jackie	Gordon House Neighbourhood Services, Vancouver
Dewar, Marion	Mayor of Ottawa
Ford, Marguerite	Alderwoman, City of Vancouver
Hervieux-Payette, Céline, M.P. (L)	Member of the Justice Committee
Hnatyshyn, Ray, M.P.	Justice Critic, PC
Layton, Monique	Researcher, Vancouver
Lewis, Debra	Vancouver Status of Women
MacDonald, Lynn, M.P.	Justice Critic, NDP
McMurry, Hilary	Vancouver Status of Women
Mitchell, Margaret, M.P.	Women's Critic, NDP
Raphanel, Gayle	Lawyer and member of Vancouver Association of Women and the Law and Vancouver Coalition for a Non-Sexist Criminal Code
Ridington, Jillian	Chair of National Action Committee on the Status of Women Justice Committee and co-author of "Pornography and Prostitution," a Vancouver Status of Women monograph
Robert, Terry	Staff Sergeant, Vancouver Police Morality Squad
Zingaro, Linde	Alternate Shelter Society (Senator Hotel Project), Vancouver

APPENDIX B

Chronology of Canadian Prostitution Law

- 1839 In Lower Canada the police were authorized to apprehend "all common prostitutes or night walkers wandering in the fields, public streets or highways, not giving a satisfactory account of themselves." It was aimed solely at women and specific offensive behaviour was **not** a prerequisite for detention. Persons in the habit of "frequenting houses of ill fame" could also be arrested.
- 1851-1881 Many Canadian municipalities passed by-laws suppressing houses of prostitution, prostitutes, inmates and frequenters.
- 1858 After Lower Canada and Upper Canada united into the Province of Canada, this legislation extended to the United Territory. It also authorized the arrest of inmates of bawdy houses.
- 1865 The **Contagious Diseases Act** (CDA) was designed to protect military men from venereal diseases. The statute authorized the detention of diseased prostitutes for up to three months at certified hospitals. It may never have been enforced since no hospitals were ever certified to detain diseased prostitutes. The statute expired in 1870.
- 1867 The newly created federal government passed an act which "prohibited all persons from procuring the defilement of women under the age of 21 . . ."
- An Act respecting "vagrants" was also passed in which common prostitutes, keepers of bawdy houses and houses of ill-fame, frequenters of such houses and all persons who supported themselves for the most part by the avails of prostitution, were liable to arrest.
- Vagrants were condemned to a maximum of two months imprisonment, \$50 or both.
- 1871 An act made it a requirement for women convicted under the **Vagrancy Act** more than once to serve their sentences in the Quebec Female Reformatory. Minimum sentence was five years in contrast to the maximum penalty under the **Vagrancy Act** of two months.
- 1874 **Vagrancy Act** amended to increase penalties involved to a maximum of six months at hard labour.
- 1880 The federal government decided to regulate against the prostitution of Indian women and "An Act to amend and consolidate the laws respecting Indians" was introduced. The act prohibited the keepers of bawdy houses from allowing Indian women prostitutes on the premises.
- 1879-1899 Legislators began to enact a rash of provincial statutes to remove young girls from the custody of parents who lived in a socially unacceptable manner and to transfer them to newly-established industrial refuges for girls.

- 1882 An Ontario Grand Jury recommended that imprisonment as well as a fine should be inflicted on keepers of bawdy houses, that present laws should be strictly enforced, and that "every publicity be given to those who frequented brothels."
- 1884 To ensure that native Canadians could be convicted of being brothel keepers, the **Indian Act** (see 1880) was amended to state specifically that keepers of "tents and wigwams," as well as houses, fell within the bawdy house provisions.
- 1886 An amendment to the **Indian Act** provided that every Indian keeping or frequenting a disorderly house, tent or wigwam used for such purpose was also liable. The federal government repealed this provision in 1887 and added a new one meant to apply only to Indian women prostituting themselves.
- 1886 An Act respecting offences against public morals and public convenience was created. It made it an offence to entice a woman to a brothel, or to knowingly conceal her. It forbade men to seduce and have illicit connections with any woman of previously chaste character. Bawdy house provisions were re-enacted with additional prohibitions against being an inmate.
- 1892 Enactment of the **Criminal Code**. The federal government adopted a statute against procuring women for unlawful carnal connection and made it unlawful for parents or guardians to encourage the defilement of their daughters or wards. Conspiracy to defile was also prohibited. Provisions under the **Indian Act** were inserted into the **Criminal Code** but restricted to unenfranchised Indian women only.
- This legislative picture would remain in place until 1972. Most of the statutory amendments in the 20th century did no more than add a few peripheral offences against prostitution-related activities and fine-tune the penalties.
- 1907 Definition of a bawdy house amended to include "a house, set of rooms or place of any kind kept for the purposes of prostitution or occupied or resorted to by one or more persons for such purpose."
- 1909 The penalty for procuring women increased from a maximum of two years to a maximum of five years.
- 1913 The procuring provisions were extended to include everyone who "on the arrival of any woman or girl in Canada, directs her to any common bawdy house"; or who "for the purposes of gain, exercises control, direction or influence over the movements of any woman or girl in such a manner as to show that he is aiding, abetting or compelling her prostitution with any person or generally."
- 1913 Men who lived off the avails of prostitution of another person were subjected to a reverse onus clause which stated: "where a male person is proved to live with or to be habitually in the company of a prostitute (. . .) and has no visible means of support or to live in a house of

prostitution, he shall, unless he can satisfy the court to the contrary, be deemed to be living on the earnings of prostitution."

- 1913 It was made clear that habitual frequenting was no longer a prerequisite to conviction: "everyone found in any disorderly house" was now to be subject to conviction.
- 1913 The procuring penalty was increased to include whipping on second and subsequent convictions.
- 1915 The penalty for being an inmate of a common bawdy house was increased from a maximum six months to a year; keepers and inmates of bawdy houses who had been convicted three or more times were required to serve a minimum term of three months, with a maximum of two years.
- 1918 The **Criminal Code** was amended to create a new federal offence of "corrupting children through such behaviour as indulging in 'sexual immorality' in the home."
- 1920 The procuring penalty was increased to a maximum of ten years.
- 1939 The Supreme Court of Canada (**The King v. Betty Cohen**) found that the habitual use by one woman of her own premises for prostitution was sufficient for a conviction to be made for the offence of keeping a common bawdy house.
- 1947 Maximum sentence for keepers and inmates of bawdy houses was increased to three years.
- Another new offence was added: "Everyone who knowingly takes or transports (. . .) any other person to any common bawdy house is guilty of an offence and liable on summary conviction."
- 1968 The Supreme Court of Canada (**Patterson v. The Queen**) indicated that isolated instances of prostitution were not sufficient to brand a place a common bawdy house – there must be some evidence of habitual use.
- 1972 Section 175(1)(c), commonly referred to as "Vag. C" and in place since 1867, was repealed and replaced by a soliciting offence (195.1). "Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction."
- NOTE: The following Provincial Appeal Court and Supreme Court of Canada decisions reflect the four problems inherent in this law: What constitutes soliciting? Does the customer solicit? Can a male be a prostitute? What is a public place?
- 1972 An Ontario County Court (**R. v. Patterson**) held that males could not be prostitutes.
- 1973 The B.C. Supreme Court (**R. v. Obey**) held that males could be prostitutes.

- 1978 The Supreme Court of Canada (**R. v. Hutt**) held that "soliciting" means conduct which is "pressing or persistent."
- Judgement also indicated that a car was **not** a public place but this is not binding because it was not one of the grounds of the appeal.
- 1978 The B.C. Court of Appeal (**R. v. Dudak**) held that the customer could not be convicted of soliciting. They gave approval to their earlier **Obey** decision (1973) which said a prostitute could be either a female or male person.
- 1978 The Ontario Court of Appeal (**R. v. DiPaola** and **R. v. Palatics**), held that both customer and prostitute could be convicted of soliciting (for the purpose of prostitution).
- 1978 Regarding the use of a premise for prostitution, the Ontario court of appeal (**R. v. Ikeda and Widjaja**), held that twice in the same room on one night was not sufficient to brand a place as a common bawdy house.
- 1980-1982 Montreal, Calgary, Vancouver, Niagara Falls and Halifax enacted by-laws dealing with street prostitution. The content of the by-laws was quite similar. The first, enacted in the City of Montreal in 1980, forbade remaining in public places (defined as including any place to which the public has access, by right or explicit or implicit invitation) for the purposes of prostitution, or approaching others for the same purpose in such a place. The Calgary by-law enacted in 1981 forbade being, remaining or approaching another on a street for the purpose of prostitution. Punishment was by way of substantial fines, which increased in quantum for subsequent offences. The Calgary enactment became the model for subsequent by-laws. Vancouver, Niagara Falls and Halifax enacted their by-laws in the spring of 1982.
- 1981 The Montreal by-law was declared **ultra vires** by the Superior Court of Quebec.
- 1981 The Supreme Court of Canada ruled in **R. v. Whitter**, **R. v. Galjot** that "pressing or persistent" meant repeatedly soliciting the same person.
- 1982 The B.C. County Court of Cariboo (**R. v. Wise**) found a motor vehicle to be a public place.
- 1982 The Alberta Court of Appeal (**R. v. Cline**) held that a person who is already a prostitute could not be procured.
- 1982 The Ontario Court of Appeal (**R. v. Pierce and Gollaher**) held that a parking space, habitually resorted to by a prostitute in various motor vehicles belonging to her customers, was a "place" for the purposes of the definition of a bawdy house.

- 1983 **Bill C-127**, proclaimed January 4, 1983, made several changes to the **Criminal Code**:
- "prostitute" now means "a person of either sex engaging in prostitution";
 - any person (rather than "any female person") who is not a common prostitute or a person of known immoral character is protected under the procuring section;
 - any person (rather than **any male** person) living on the avails of prostitution is liable;
 - a person can be convicted of procuring upon the evidence of only one witness.
- 1983 The Supreme Court of Canada (**Westendorp v. The Queen**) found the Calgary by-law to be invalid and **ultra vires** the power of the City of Calgary.
- 1983 The Justice Minister tabled in the House of Commons proposals to amend the soliciting section of the **Criminal Code** which would ensure that the offence applies to anyone who solicits, whether it be the prospective customer or prostitute, and which would include within the definition of a "public place" a motor vehicle in or on a public place. He also announced the creation of a special committee to make further recommendations on both prostitution and pornography. The Committee is to report its findings no later than December 31, 1984.

APPENDIX C

THE PROPOSALS RECOMMENDED BY THE STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS MARCH 1983

1. Replace the present definition of "public place" in s. 179 of the Criminal Code with the following:

"public place" includes any place to which the public have access as of right or by invitation, express or implied; or any vehicle situated in a public place, and further includes any private place that is open to public view.

2. Amend s. 195.1 and add ss. 195.2 - 195.4 as follows:

195.1 (1) Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.

(2) For the purposes of subsection (1), "person" shall be deemed to include the person soliciting the services of a prostitute.

195.2 (1) Every person who offers, or accepts an offer, in a public place, to engage in prostitution is guilty of an offence punishable by a fine of not more than \$500, or in default of payment, by no more than 15 days imprisonment.

(2) For the purposes of subsection (1), "person" shall be deemed to include the person engaging or seeking to engage the services of a prostitute.

195.3 Everyone who offers or accepts an offer to engage in prostitution with a person under the age of 18 years, whether or not he believes the person is 18 years of age or more, is guilty

(i) of an indictable offence and is liable to imprisonment for two years,

or

(ii) of an offence punishable on summary conviction.

195.4 The operation of sections 195.1 to 195.3 shall be reviewed by such committee of the House of Commons as may be designated or established by Parliament for that purpose within three years after the coming into force of these provisions, and the committee shall within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes the committee would recommend.

APPENDIX D

Proposed Act to Amend the Criminal Code

On February 7, 1984 the Minister of Justice, the Honourable Mark MacGuigan, tabled **The Criminal Law Reform Act** (Bill C-19) which proposed the following amendments to the soliciting provisions of the **Criminal Code**.

1972, c.13, s.15	48. Section 195.1 of the said Act is amended by adding thereto the following subsection:
Definition	"(2) In this section,
"prostitution"	"prostitution" includes obtaining the services of a prostitute;
"public place"	"public place" includes a motor vehicle located in or on a public place."

Explanatory Note

The proposed Act contains the following explanatory note relating to Clause 48.

Clause 48: New. This amendment would ensure that the offence of soliciting applies to the person who initiates the solicitation, whether it is the prospective customer or the prostitute and would define "public place" to include a motor vehicle.

Central Office
66 Slater Street
18th Floor
Ottawa, Ontario
K1P 5H1
(613) 992-4975

Eastern Regional Office
800 Dorchester West
Suite 1036
Montreal, Quebec
H3B 1X9
(514) 283-3123

Western Regional Office
1055 West Georgia Street
18th Floor
Vancouver, British Columbia
V6E 3P3
(604) 666-1174

Western Local C.
269 Main Street
Suite 600
Winnipeg, Manitoba
R3C 1B2
(204) 949-3140

